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REJOINDER ON BEHALF OF THE APPLICANTS TO THE COUNTER AFFIDAVITS OF MADHYA PRADESH, GUJARAT AND MAHARASHTRA

In the Supreme Court of India, Civil Writ Jurisdiction, I.A. No. 21-22 OF 2006 IN Writ Petition (Civil) No. 328 of 2002, In the matter of Narmada Bachao Andolan v Union of India & Others and in the matter of Kailash Awasya & Others

International Environmental Law Research Centre
International Environment House
Chemin de Balexert 7
1219 Châtelaine
Geneva, Switzerland
E-mail: info@ielrc.org

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The Chief Justice of India and

His companion justices,

The Applicants state and submit as under: -

1. This Rejoinder is filed to the counter affidavits filed by the State of Madhya Pradesh, Gujarat and Maharashtra, *issue-wise*, to make it clear that Resettlement and Rehabilitation (R&R) has not been completed even upto the dam height of 110.64 Mts. Therefore, the permission granted by the Narmada Control Authority (NCA) to increase the dam height to 121.92 Mts. is wholly unsustainable and in violation of the judgments of this Hon'ble Court and the NWDTA. At the outset, the Applicants wish to submit that repeated references made to Narmada Bachao Andolan (NBA) is objectionable and any attempt made in this manner cannot dilute the responsibility of the States to comply with the R&R within the time frame, in letter and spirit, as per the Award and Judgments/directions of this Hon'ble Court. It is the democratic and constitutional right of the Applicants, as citizens of this country, to align with any democratic affiliations as they wish and to organize and participate in peaceful protests; this can not be a pretext to deny them their entitlement of rehabilitation in accordance with law. The State of MP should focus on rehabilitation of oustees rather than trying to distract from the issue at hand.

2. The documents on record clearly reveal that the State of M.P. has shown its consistent reluctance, casualness and culpable violations in not undertaking the obligation to implement R&R of the Project Affected Families (PAFs): the judgment of 2000 speaks about it, which the judgment of 2005 not only reiterates but further 'deprecates' the conduct of the State of M.P.

Even when the Award spoke about the rehabilitation of 'temporarily affected oustees' and 'adult sons' of the affected families, the State of M.P. violated it. It is because of the judgment in 2005 that thousands of families were included, though they had been wrongly excluded by the State of Madhya Pradesh earlier. The State of M.P. in its counter affidavit has made statements contrary to their obligations under the Award which have been dealt with at the appropriate place in this rejoinder. It may, however, be added at the outset that the grant of R&R on the 'better off principle' is an obligation under Article 21 of the Constitution (para 50 of the 2000 judgement). The State carries the burden of establishing compliance of R&R in letter and spirit. The resettlement and rehabilitation are not a mere game of numbers, it has a live content: dealing with people, families, children who are uprooted and have to be *in actuality* rehabilitated, at least with minimum mandated facilities. It requires, therefore, a sensitive approach and the action of the State in offering 'uncultivable land' or 'cash compensation' has to be viewed as merely a cover to facilitate increase in the dam height without benefits being actually granted to the affected people notwithstanding the fact that it is in clear violation of the Award and the Judgments of this Hon'ble Court. A true and correct copy of the NWDT Award is **Annexure – A 35.**

3. That the R&R, which the State of M.P is claiming to have fulfilled is, *inter alia*, based on the following statements made in their counter affidavits, which are either in violation of the Award and/or the directions of this Hon'ble Court in its two judgements of 2000 and 2005: -

i) In para 2.8 of the counter-affidavit, which is repeated in para 5 of the reply to the additional affidavit, the State of M.P has contended that the stipulation in the Award that one year before the submergence, the R&R should be completed, does not apply to the State of M.P.

ii) In Para-8.8 at page 20 of the counter-affidavit, it is stated that 'it is submitted that vide judgement dated 15th March, 2005, this Hon'ble Court had directed to rehabilitate all the PAFs whose agricultural land is affected temporarily. *As a matter of fact, prior to that date, i.e. 15.3.2005, GoMP had no occasion to rehabilitate the persons temporarily affected at various heights of the project.'* (Emphasis supplied). The Award did not make any distinction between oustees permanently or temporarily affected. The State of M.P was thus violating the terms of the Award.

iii) In para 8.9 at pages 20-21 of the affidavit, it is stated that the SRP does not violate any provisions of the NWDTA or any directions of this Hon'ble Court.

iv) The State has offered Rs. 50,000/- for house plots in violation of the sub-clause VI of clause XI of the NWDTA. The explanation given in para 10 at page 23 is that 'this amendment in NWDTA has been made on public demand.....'

v) In para 11 of the reply to the additional affidavit, where the Applicants have questioned the distance between the house plot and the agricultural land which is offered to them (that too being not cultivable), it has been stated that 'as far as the allegation of land offered at a distance is concerned, no such rider is placed in the NWDTA or any direction of this Hon'ble Court'. In the same para 11, no answer has been given to the ex-parte allotments.

4. That the entire argument of the state of Madhya Pradesh with regard to R&R is totally contrary to their own affidavit filed before this Hon'ble Court on 6.5.1999, in which the state had itself pointed out what is the correct meaning and interpretation of various clauses of the NWDTA. This affidavit was also referred to in the 2005 judgement by this Hon'ble Court. In Para 17 of this affidavit, the State submitted:

'Madhya Pradesh submits that mere undertakings or assurances cannot be a substitute for actual R&R work strictly in accordance with the following stipulations in the NWDTdecision:'

After saying so, the State of M.P. had referred to sub-clause IV (2)(iv) of clause XI of the Award which speaks about rehabilitation to be done one year in advance. They further referred to clause IV(3), IV(6)(ii) that no submergence shall take place unless all payment of compensation has been paid. Thereafter, clause V(3)(iii) referring to six months notice was mentioned. Thereafter, in para 18, the following categorical statement was made by the GOMP:

'18. It is clear from the above stipulations in the NWDT decision, that irrigable lands and house sites will be made available to the PAFs one year in advance of submergence and amenities are also to be provided. Further, the notices for vacation of lands are to be given after completion of the R&R of the PAFs and that such notices are to be given on or before 31st December, i.e., six months before actual submergence (likely on 1st July of next year). These stipulations do not permit raising of the dam (that would cause submergence) on the basis of preparedness or assurances or undertakings.'

A true and correct copy of the said affidavit dated 6.5.1999 filed by State of M.P. in WP (Civil) No. 319 of 1994 is **Annexure – A 36.** The said stand of State of M.P. completely demolishes the arguments now raised with regard to non-applicability of one-year prior requirement for completion of R&R and that mere undertakings or assurances cannot be a substitute for actual R&R work in accordance with the Award. The entire R&R of M.P. is not only full of wrong data concerning the total number of PAFs but the same has been made on the basis of undertakings and assurances to be completed at a future date. This is clear even from the impugned permission granted by the NCA on 8th March, 2006.

5. That the State of Madhya Pradesh has given the status of R&R with regard to allotment of land and house plots in Paras 6.1 to 6.9, and regarding R&R sites from Paras 7.1 to 7.14 read with Para 6.2.

The Applicants have analysed the constantly-changing figures which have been given by the State of Madhya Pradesh regarding R&R at different stages, to prove that it is sheer game of numbers and not the correct picture of implementation of R&R as per the Award and the judgements of this Hon'ble Court.

Game of Numbers - Madhya Pradesh

Sl. No.	Source	Date	PAF's upto 121.92 cm	PAFs between 110.64m and 121.92m	PAFs claimed to be resettled		110.64m Back log to be resettled	Balance to be resettled	Total Balance to be resettled
					In Gujarat	In M.P.			
1	Minutes of the 62nd Meeting of the R&R Subgroup	12th September 2005	30690	-	4262	13026	13233	13402*	13402
2	Status Report Narmada Control Authority	31st December 2005	28742		4729	12468	13233	11638	24778
3	Press Release issued by the NVDA	18th February 2006	24421	-	-	-	-	No mention of status	No mention of status
4	Letter from Prof. Soz to Shri L.C. Jain	6th March 2006	-	17255	3339*	13916**	No mention of status	? **	-
5	Minutes of the 63rd Meeting of the R&R Subgroup	8th March 2006	-	16156	2238*	13918*	No mention of status	Nil	Nil
6	Status report placed as Annexure 2 in Uol's Application	7th April 2006	23322	-	4355	18967	No mention of status	Nil	Nil
7	Press release issued by the NVDA	17th April 2006	24421	-	5456	18965	No mention of status	Nil	Nil

* These figures correspond to PAFs between 110.64 and 121.92m

** This letter mentions that 13916 PAFs are to be resettled in M.P. but doesn't specify whether they are actually resettled or yet to be resettled.

Issues:

1. The main issue here is the fluctuation in the number of PAFs at every turn, be it with regard to the number of PAFs upto 121.92m or between 110.64m and 121.92m or even in the backlog families.

2. The claims of completion of R&R are being made despite the fact that R&R sites are not even being established for several adivasi villages several R&R sites are not even ready, PAFs have not purchased land under SRP (without prejudice to our argument that SRP is illegal), only registries for land are produced and no mention of change in land title, registered land is less than entitlement, etc. These admissions are of the GOMP itself.

3. The 110.64m backlog PAFs totally 1333 PAFs are reflected in the official records upto 31st December 2005 after which there are no details provided about their R&R status.

4. It is also surprising how the figure of affected families at 121.92, was arrived at. None of the previous records of the R&R Subgroup, NCA, etc mention any figure for number of affected families. There has been no survey to demarcate this area. In fact, contour level surveys are going on in the submergence area of 121.92m now.

5. The cumulative number of PAFs at and under 121.92m has reduced from 30690 PAFs on 12th September 2005 to 28742 on 31st December to 24421 and then reduces further to 23322 finally reverting back to 24421 PAFs. Thus we have a reduction of 4321 PAFs between 31st December 2005 and 17th April 2006.

6. There is no consistency even with regard to the number of families affected between 110.64m and 121.92m. As of December 31st 2005, the number of PAFs is shown to be 7049 PAFs only. This suddenly changes to 1755 PAFs on the 6th of March and is reduced to 16156 PAFs two days later.

7. There is also no consistency with regard to the claims of the number of PAFs resettled in Gujarat and Madhya Pradesh as well.

8. While on 6th March 2006, 3339 PAFs affected at 121.92m are claimed as resettled in Gujarat, two days later it is reported that 2238 PAFs are resettled in Gujarat.

9 In a matter of 10 days after 7th April 2006, the number of PAFs claimed to be resettled in Gujarat has increased from 4355 PAFs to 5456 PAFs i.e. 1101 PAFs.

10. According to the Narmada Award and the Supreme Court judgments, all PAFs scheduled to face submergence in a particular monsoon are to be rehabilitated at least 6 months before their due submergence. However, 24778 PAFs affected at 121.92m and, under the present circumstances, scheduled to face submergence in the monsoon were yet to be rehabilitated as of 31st December 2005.

11. All PAFs upto 121.92m are claimed as resettled on 8th March 2006. Considering that the balance PAFs to be resettled on 31st December 2005 was 24778 PAFs, the claim of the government implies that about 370 PAFs were resettled every day during this interval. A true and correct copy of the Hindu report dated 29.4.2006 bearing an R&R status report dated 31.12.2005 is **Annexure - A 37.**

6. Re: 48 Applicants and connected issues:

6.1 At the outset, the Applicants wish to give their Rejoinder to the status of 48 Applicants before this Hon'ble Court. It has been mentioned in the Application that out of 48 applicants, 1 to 42 are Tribals and that all the Applicants are affected under 110.64 m of the dam height. In fact, the lands and villages of Applicants 2 to 38 have already faced submergence. The Applicants 22 to 32 are affected even at the dam height of 69 Mts. and faced submergence starting in 1994, but still they have not been rehabilitated. The complete detail of the status of the Applicants has already been given in Para-22 at Pages 30 to 37 of the Application. In these details, in the last column, the village where uncultivable land has been offered to them has been pointed out. The fact that the lands are uncultivable is corroborated by the Affidavit dated 11th April, 2000 filed by the State of M.P. (Pages 101 to 121). However, State of MP has not even bothered to allot lands, whatever the quality, to 4 Applicants because it claims that the GRA has not passed orders for them as yet (para 6.5 of the Counter). Does the NVDA's legal obligation to resettle PAFs begin only after GRA passes an order in that regard? These PAFs are affected under 110 m of the dam and they have been constantly asking that they be resettled in MP, why then does the NVDA have to wait for a GRA order to allot lands to them? Also, how did the GRA give its clearance for raising the height to 121 m, when many such cases of PAFs under 110 m which are not rehabilitated, are pending before it.

6.2 The State of MP has placed as Annexure R-2 a table showing rehabilitation benefits given to Applicants. The shocking statement made in this table and in Para-2.6 of the Counter Statement is worth quoting: 'Applicant no 2 to 35...are those who were settled in Gujarat, but have returned and petitioned the GRA for allotment of lands in Madhya Pradesh, and pursuant to orders made in their favour by the GRA, grazing lands by MP, which cannot be considered as a valid offer of rehabilitation.

6.3 Further, the response of the State of MP in para 8.2 that Applicant no. 42 is not entitled as he is a minor son, is baseless as he has a GRA order stating that he 'had attained majority on relevant date... (and) would be entitled to reliefs due to (him) in accordance with the provisions of NWDT Award and RR Policy of the state governments...'. This GRA order ' is part of Annexure A/2 (Colly) at page 66-67 of our application.

6.4 The table (Annexure R-2) also claims that Applicants 39 and 40 are not entitled to land-for-land. It must be noted that earlier both these PAFs were shown to be entitled for land. In fact, they were shown as resettled in Gujarat by ex-parte land allotment though they never consented to go to Gujarat. Now, since they chose to stay in MP, the State is finding some way or the other to dis-entitle them. In regard to Applicant no. 40, it must be added that he is losing land not just in submergence but in 1996 some of his agricultural land was acquired to make an R&R site, i.e., he faced secondary displacement as well. At that time, as per the MP policy, he was entitled to alternate land for this acquired land as well, but he was not informed of this and was given cash instead, which is illegal. Now, GOMP is trying to acquire his balance agricultural land also for the purpose of making R&R site. It must be noted here that subsequent to the judgement of this Hon'ble Court in October 2000, the State of MP has changed its policy and now those families whose lands are acquired for making R&R sites are not even entitled to alternate land. Earlier the policy also stated that land of tribals would not be acquired for making R&R sites in a manner that leaves them landless, however this too was changed subsequent to the 2000 judgement and lands of tribal PAFs like Applicant no. 40 are being entirely acquired without providing alternate land. Similarly, Applicant no. 39, has also been dis-entitled and now the NVDA allotments of land have been made to them.' It is unbelievable that State can utter such lies. These PAFs were, in fact, allotted ex-parte lands in Gujarat even though they never gave consent to settle in Gujarat. It was on this basis that the clearance was given for increasing dam height from 95 to 110.64 Mts and it is again on the same basis that clearance has been taken from 110.64 Mts to 121.92 Mts. These families were never shifted to Gujarat, nor have they ever taken possession of the lands there. Hence this claim of GOMP is totally baseless and, in fact, it exposes the illegality of the process of ex-parte land allotments, where PAFs are randomly and without their consent allotted lands which they are not intimated about. If in reality these persons had been settled in Gujarat, as GOMP claims, then GOMP would not have entertained their claims for resettling in MP. The true fact is that these Applicants have been claiming their rehabilitation in M.P.; most of them are poor tribals but even after going to the GRA and getting order, they are not rehabilitated and still their names are shown in the ATRs of Gujarat, even though they stay unrehabilitated in their MP villages. Applicant nos. 17 to 21 of Nadi Sirkhedi village did, however, give their consent to settle in Gujarat. However, for State of MP to say, as they have, in paras 8.2 and 12, that these families returned to MP 'due to their problems' amounts to misleading the Court on the real facts. The reality is that Applicants 17-21 were taken to see land in Vyadpura site in Baroda district in Gujarat, which they approved and returned to their village. Later, when these families went back to Vyadpura to shift there and resettle, they found that the land they had chosen had been allotted to PAFs from another hamlet of their own village. Disappointed and feeling cheated, these families returned to MP and later petitioned the GRA for rehabilitation in their home state itself. However, even now they are being offered and allotted uncultivable claims that he is not entitled to land-for-land. His total landholding is 2,238 ha of which, according to NVDA's own documents, 1.111 ha (in 2 survey nos, 3/1/1 admeasuring 0.405 ha and 102 admeasuring 0.716 ha) is in submergence, which is 49%. Why then has he been disentitled from getting alternative land?

6.5 The response of the State of M.P. in paras 6.5, 8.1, 8.8, 11 is that out of these 48 Applicants, Applicant Nos.2 to 8, 11 & 15, that is, total 9 Applicants and also father of Applicant 1 have opted for SRP. However, the true picture in relation to the father of Applicant no.1 emerges from the affidavit filed herein by him, where he has clearly stated that he was not offered land and was given SRP under pressure, and has been unable to buy land with the money. A true translation of the affidavit filed by Shri Ganesh Lakshmansingh is **Annexure – A 38.**

With regard to the 9 PAFs from Bhitada, it is respectfully submitted that NVDA officials on 11.4.2006 took 15 PAFs from Bhitada and kept them at their rest houses in Jobat and Kukshi for 2 days. Then the officials took them to meet the sellers of the land, who they had already identified. The entire transaction and deal was carried out by the NVDA officials, PAFs did not have any role in that. Out of 15 PAFs, only 9 PAFs chose to take up the land. The others stated that since this offer would deprive them of a house plot at a well-developed resettlement site, and would not even provide for their major sons, they refused to take up the offer. The 9 PAFs who agreed were then

taken to the bank in Kukshi where NVDA officials opened bank accounts for them and the money was immediately withdrawn and given to the sellers of the land. It is thus respectfully submitted that the NVDA officials played an active role in this transaction merely to mislead this Court to show that 'some PAFs have come out of the clutches of the NBA and accepted SRP.' They are using this to justify the entire process of SRP, whereas this incident shows how impossible it is for illiterate adivasis to take SRP and purchase land for themselves. Nowhere else have NVDA officials played such a role in making people purchase land through SRP. The Applicants reiterate that the State cannot absolve itself of the responsibility of providing rehabilitation with land, house plots and rehabilitation sites with all amenities, by giving people money and asking them to fend for themselves.

6.6 It must also be noted that these 9 names of Bhitada, along with the other Applicants of the village, do not even figure in the ATR of 121.92m. As far as other Applicants are concerned, it is stated that 'these Applicants names are not reflected in MP ATR because their names were included in Gujarat ATR'. But surprisingly, it has also been further stated that they were extended due R&R packages including allotment of land from land bank in M.P. It may be pointed out at this juncture that in the 2000 judgment it was mentioned that the State of M.P. was trying to push every PAF into Gujarat. Thus, MP continues, to try to evade its responsibility of rehabilitating the oustees of State of M.P. in its own territory. In the 2005 judgment the same thing happened, viz., that the Applicants-oustees were shown in the 'ATRs of Gujarat and clearance upto the dam height of 110.64 was taken which attitude has been deprecated by this Hon'ble Court. The fact that their names have not been shown in the ATRs of M.P., in spite of the specific orders passed by GRA directing that they should be given 2 Hectares of irrigable cultivable lands in M.P., shows the culpable attitude of the M.P. in utter disregard of the Award and directions of this Hon'ble Court. It was on the basis of the facts regarding 48 Applicants that the present Application was filed and it was prayed that till their rehabilitation no submergence should take place. The Applicants have been successful in proving that the State of M.P. has not done rehabilitation of PAFs of 69 Mts. to 110.64 Mts. And, therefore, they are not entitled to seek any permission to raise the dam height. It is shocking that neither the R&R Sub-Group nor the NCA which was aware of these facts cared to examine the rehabilitation of these Applicants before granting impugned clearance.

6.7 Two other issues are dealt with under this heading itself. First is the allegations regarding the Applicants of villages Picchodi and Jalsindhi in the earlier I.A.s no. 4 & 7 of 2004 in Paras 8.1 and 12. The PAFs of Picchodi were first allotted ex-parte uncultivable land at Musapura, for which a soil test report was filed in this Hon'ble Court in the said Application, which the GOMP did not deny. The Hon'ble Court then directed that the Applicants of Picchodi should be rehabilitated with cultivable irrigable lands and that the GRA should find suitable lands for this purpose. The lands at Khajuri were not meant for the Picchodi PAFs, but yet they were allotted ex-parte land there. The Applicants wrote to the GRA to render their cooperation on the issue of finding lands for them, but the GRA did not respond to them, and instead on 16.6.2005, they received ex-parte allotment of lands at Kesur. It must be noted that the said lands at Kesur had, at the same time, also been allotted to PAFs of village Khaparkheda which they had rejected due to uncultivability. A letter was then sent to the NVDA dated 9.7.2005 and a reminder on 18.8.2005 from the Counsel for the Picchodi Applicants rejecting the offer of uncultivable lands at Kesur and giving details. No response was given to either of these letters, but later the Picchodi PAFs were offered yet another land at Khalbujurg, which they went to see. This land, as per the sellers of the land itself, is of poor quality, and hence was not accepted by Picchodi PAFs. Similarly, 14 Applicants of Jalsindhi were allotted lands at Khajuri, which are cultivable, but are unsuitable for the oustees as they have repeatedly stated. In this regard the Application of undeclared oustees (LA. Nos. 18-20) is also pending before this Hon'ble Court, to which GOMP has given no reply. Further, Jalsindhi PAFs state that the area around Khajuri is inhabited by a rival tribal group, Bhabriya Bhils, and there are very serious issues of them being able to settle in this host community. As per the judgement dated 15 March 2005 of this Hon'ble Court only irrigable, cultivable and suitable land should be offered to the oustees and if it is not done, oustees will be within their rights to refuse it. They, however, continue to hope that the GoMP will rehabilitate them as per the letter and spirit of the Award, instead of continuing to give offers of uncultivable land.

6.8 Another issue to be dealt with in this section is the loss due to submergence that has been faced by several Applicants and hundreds of other PAFs in M.P. The GoMP has stated in Para 12 of its reply that 'In NWDTA no provision for crop loss exist'. In this regard, it is respectfully submitted that indeed there is no provision for compensation for crop loss in NWDTA because NWDTA was unambiguous in stating that in no event should there be submergence without rehabilitation. In addition, GoMP has denied that Applicants have faced submergence without rehabilitation; 'It is submitted that there was loss of houses or lands neither was it claimed before GRA.' This statement is blatantly false. Even the local tehsil office at Alirajpur has been making panchnamas for many

years now documenting the submergence of crops, land and houses due to submergence by Sardar Sarovar Dam. These issues were certainly raised before the GRA. The NVDA's reply to the allegation and the oustees rejoinder is Annexure A/20 (Colly) at pages 206-208. GRA's order is completely in line with the NVDA's reply that the PAFs should seek compensation from the Collector, even though it was clearly shown that this submergence was not caused due to natural flood. PAFs of other villages have also written to the GRA on this issue in October 2004 (all these petitions can be produced before this Court if so desired) but the GRA has not given any response to these other petitions as yet. Hence, this order of the GRA may be set aside and compensation be granted for those who faced submergence without rehabilitation.

In addition, it must be noted that in the 52nd meeting of the R&R Sub-Group dated 8th February, 2002, it was maintained: 'If the crop gets damaged because of the flooding at intermediate stages of the dam, compensation can be paid to be person so affected, although the Award does not prescribe or recommend any such compensation for damage to crops beyond FRL of the dam.'

7. **Re: 407 PAFs**

7.1 The contention of the State of Madhya Pradesh is that out of the total 4286 PAFs who are eligible for land allotment, 407 PAFs have been allotted lands from the State's land bank as per their demand. The details of some of these PAFs are given in Annexure -A/6 of the Application (para 8, pages 83-100). Reply to para 8 is given in para 8.8 of the counter-affidavit by the State of Madhya Pradesh, The stand taken by the State is that the objections have been raised regarding cultivability of the land without actually tilling the land and that 'criticizing the land available in land bank is one way'. It may also be stated that the uncultivability of the land was not based on the applicants' survey or report but on the State's own affidavit filed before this Hon'ble Court on 11.4.2000. The applicants, in view of the untenable contentions raised by the State of M.P in their reply in 2005, had done an extensive analysis of the land available in the land bank of the State of M.P. It may be mentioned that the reply to paras 10 as well as 11 has been given in para 8.8 by the State but there is no denial of the analysis of the land available with the land bank made by the applicants. Out of the 407 PAFs, the position of some of them as per Annexure A/6 is as follows: -

S.No.	No. of PAF and Village and total land allotted	Status of the land as per 11.4.2000 Affidavid of State of M.P.
1	30 PAFs of Village Kharyabadal and several persons of Picchodi village. The total allotted - 74 hectares @ 2 hectares per PAF.	Land which is offered in Rabadghati without encroachment is only 10 hectares (page 113).
2.	8 PAFs of Bhilkheda. The total land allotted - 16 hectares @ 2 hectares per PAF.	The land which was offered in Bujurg is 0 hectare. (page 120).
3.	22 PAFs of Village Avalda. The total land allotted - 44 hectares @ 2 hectares per PAF.	The land which was offered in Pritnagar is 0 hectare. (page 117).
4.	4 PAFs of Village Avalda. The total land allotted - 8 hectares @ 2 hectares per PAF.	The land which was offered in Nimsar is 0 hectare. (page 117).
5.	5 PAFs of Village Picchodi. The total land allotted - 10 hectares @ 2 hectares per PAF.	The land which was offered in Kotwar Bujurg is 4 hectares. (page 117).
6.	7 PAFs of Village Avalda. The total land allotted - 14 hectares @ 2 hectares per PAF.	The land which was offered in Aarsi is 10 hectares. (page 118).
7.	6 PAFs of Village Avalda. The total land allotted - 12 hectares @ 2 hectares per PAF.	The land which was offered in Gurkiya is 10 hectares. (page 108).
8.	3 PAFs of Village Sondul. The total land allotted - 6 hectares @ 2 hectares per PAF.	The land which was offered in Balkhad is 1.08 hectares. (page 108).

9.	3 PAFs of Village Picchodi. The total land allotted - 6 hectares @ 2 hectares per PAF.	The land which was offered in Badal is 0 hectare. (page 117).
10.	2 PAFs of Village Amlali. The total land allotted - 4 hectares @ 2 hectares per PAF.	The land which was offered in Jhirniya is 3.085 hectares. (page 108).
11.	3 PAFs of Village Picchodi. The total land allotted - 6 hectares @ 2 hectares per PAF.	The land which was offered in Pipari is 3 hectares. (page 111).
12.	2 PAFs of Village Picchodi. The total land allotted - 4 hectares @ 2 hectares per PAF.	The land which was offered in Palsud is 0 hectares (page 117).
13.	6 PAFs of Village Picchodi. The total land allotted - 12 hectares @ 2 hectares per PAF.	The land which was offered in Khamki Barul is 0 hectares (page 108).
14.	7 PAFs of Village Bhamta. The total land allotted - 14 hectares @ 2 hectares per PAF.	The land which was offered in Jamli is 0 hectares (page 108).
15.	7 PAFs of Village Chota Barda. The total land allotted - 14 hectares @ 2 hectares per PAF.	The land which was offered in Nasirabad is 0 hectares (page 120).
16.	5 PAFs of Village Picchodi. The total land allotted - 10 hectares @ 2 hectares per PAF.	The land which was offered in Mehndikheda is 0 hectare (page 117).
17.	3 PAFs of Village Jangarva. The total land allotted - 6 hectares @ 2 hectares per PAF.	The land which was offered in Tad is 4 hectares (page-108).
18.	One PAF of Village Jangarva. The total land allotted - 2 hectares @ 2 hectares per PAF.	The land which was offered in Malipura is 0 hectare (page 108).
19.	4 PAFs of Village Jangarva. The total land allotted - 8 hectares @ 2 hectares per PAF.	The land which was offered in Gwalkheda is 9 hectares (page 108). This land has been examined by the PAFs and has been found to be uncultivable.
20.	3 PAFs of Village Jangarva. The total land allotted - 6 hectares @ 2 hectares per PAF.	The land which was offered in Sound is 8.6 hectares (page 108). This land has been examined by the PAFs and has been found to be uncultivable.
21.	4 PAFs of Village Picchodi. The total land allotted - 8 hectares @ 2 hectares per PAF.	The land which was offered in Badkichouki is 35 hectares (page 117).
22.	4 PAFs of Village Bhitada. The total land allotted - 8 hectares @ 2 hectares per PAF.	The land which was offered in Bhoinda. This is not included in the State of M.P's affidavit dt 11.4.2000 but has been examined by PAFs and found to be uncultivable grazing land with encroachment.
23.	9 PAFs of Village Bhitada. The total land allotted - 18 hectares @ 2 hectares per PAF.	The land which was offered in Kalyanpur. This is not included in the State of M.P's affidavit dt 11.4.2000 but has been examined by PAFs and found to be uncultivable grazing land with encroachment.

24.	One PAF of Village Bhitada. The total land allotted - 2.235 hectares @ 2 hectares per PAF.	Ex-parte land offered in Musapura which has been rejected as uncultivable on earlier occasion as well and has been brought to the notice of the Supreme Court during the proceedings.
25.	9 PAFs of Village Nadisirkhedi. The total land allotted - 14 hectares but for only 7 PAFs, 18 hectares has been offered.	The land which was offered in Ringnod. This is not included in the State of M.P's affidavit dt 11.4.2000 but has been examined by PAFs and found to be uncultivable grazing land with encroachment.
26.	14 PAFs of Village Anjanwara. The total land allotted - 28 hectares per PAF.	The land which was offered in Manasa, Palvada and Dolana. These lands are not included in the State of M.P's affidavit dt 11.4.2000 but has been examined by PAFs and found to be uncultivable grazing land with encroachment.

The State cannot offer uncultivable land, as per their own records and still claim the same as a valid offer. There is therefore no rehabilitation of the 407 PAFs as claimed by the State.

7. That in para 8-11 of the Additional Affidavit on pg 250-252, the Applicants showed how offers of land such as the one in Borgaon were not valid offers, since the land was uncultivable as per Respondents' own records. Also that the same piece of land has been offered to many PAFs. This amounts to illegality and fraud, and this cannot be a pretext for thrusting SRP on PAFs. In reply to this contention, in paras 8-11, the state of M.P. has stated that once a land is refused by one PAF, it becomes available for other PAFs and that as far as the allegation of land offered at a distance is concerned, no such rider is placed in NWDTA or in any direction of this Hon'ble Court. However, a reading of the ATR (pages261-266) does not show that the land was offered to another person after its refusal. Further, it is unimaginable that the process of offering the land from one person to the other was followed in the case of 317 PAFs. This is the situation not just at Borgaon but also at Pritnagar, Nasirabad and other places where PAFs have been allotted land ex-parte. The malafide conduct of the State is thus clear from their own documents.

8. <u>Special Rehabilitation Package (SRP) and claim of rehabilitation on that basis</u>

8.1 The Narmada Water Disputes Tribunal (NWDT) Award, which is binding on all the concerned States, has not provided for payment of compensation in cash or SRP or any other such package. The terms of the Award are clear and unambiguous, according to which, each eligible PAF is entitled to 2 Hec. of irrigable cultivable land and a house plot at a fully developed R&R site.

8.2 In para 152 of the 2000 Judgement, the benefits under the Award have been enlisted. The binding nature of the Award has been repeated in several paras of the 2000 Judgement, which will be referred to at the time of arguments.

8.3 As a matter of fact, with regard to the State of Madhya Pradesh, it was submitted by the petitioner-NBA (vide para 139 of the 2000 Judgement) that 'the M.P Government cannot wriggle out of its responsibility to provide land for the oustees by offering them cash compensation'. In para 151 of the 2000 Judgement, after analyzing the provisions of the Land Acquisition Act, 1894 and that the compensation provided therein can never result in satisfactory resettlement of the displaced families, it was observed that 'this payment in cash did not result in satisfactory resettlement of the displaced families. Realizing the difficulties of the displaced persons, the requirement of resettlement and rehabilitation (R&R) of the PAFs in the case of Sardar Sarover Project was considered by the Narmada Water Disputes Tribunal (NWDT) and the decision and final order of the Tribunal given in the year 1979 contains detailed directions in regard to acquisition of land and properties, provision for land, house plots and civic amenities for the resettlement and rehabilitation of the affected families.' The award of cash compensation or SRP, on the face of it, violates not only the terms of the Award and directions of this Hon'ble Court but also the very basic purpose of the R&R, which was conceived in the Award and directed to be implemented by this Hon'ble Court.

8.4 Even in the Judgement of 2005, the State Government (vide para 16) tried to push the SRP but this Hon'ble Court, while interpreting the terms of the Award, finally directed that every displaced family, whose 25% or more agricultural land holding has been acquired, shall be entitled to be allotted irrigable/cultivable land to the extent of

the land acquired subject to the prescribed ceiling in the State with a minimum of 2 hectares of land. It also held that 'in view of the dicta of the Court that the oustees would be better-off at the rehabilitated place, they should be offered land which are *really* cultivable or irrigable. They are also entitled to basic civic amenities and benefits as specified in the Award.

8.5 Another important facet of SRP and the reason why it constitutes illegality in terms of the NWDTA and this Hon'ble Court's judgments will be clear from a careful reading of Clause IV (6) (ii). The said clause reads:' In no event shall any areas in Madhya Pradesh and Maharashtra be submerged under the Sardar Sarovar unless all payment of compensation, expenses and costs as aforesaid is made for acquisition of land and properties and arrangements are made for the rehabilitation of the oustees therefrom in accordance with these directions and *intimated to the oustees.'* (Emphasis added)

Thus, the three key steps before any submergence is allowed are:

1. all payments of compensation for Land acquisition

2. all arrangements for rehabilitation are in place - which means lands have been identified.

3. all this is intimated to the oustees.

The last key step viz., intimation of the arrangements to the oustees is an essential part of the procedure.

The next clause of the Award, Clause IV (7) also must be read along with the above provision. It reads:

'Allotment of Agricultural Lands: every displaced family from whom more than 25% of its landholding is acquired shall be *entitled to and allotted* irrigable land to the extent of land acquired from its subject 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 the land shall be transferred to the oustees family if it agrees to take it. The price charged for it would be as mutually agreed between Gujarat and the concerned State. Of the price to be paid for the land a sum equal to 50% of the compensation payable to the oustee family for the land acquired from it will be set off as an initial instalment of payment. The balance cost of the allotted land shall be recovered from the allottee in 20 yearly instalments free of interest. Where land is allotted to Madhya Pradesh or Maharashtra, Gujarat having paid for it vide Clause IV (6) (i) supra, all recoveries for the allotted land shall be credited to Gujarat (Emphasis added).'

From this what clearly emerges is that oustees will be 'entitled to and allotted' this land. This means that the Government has to first allot land to the oustees and there can be no escape from this responsibility. Then the said Clause says that the land shall be transferred to the oustees 'if it agrees to take it'. This means that a specific piece of land must be offered by the Government. This offer of land can be fulfilled only by means of an official notice issued to the individual oustees, which intimates to them the said arrangements. This issue had arisen before this Hon'ble Court in relation to State of Gujarat in the course of proceedings in 1997 when the Hon'ble Court interpreted the two above said clauses as requiring mandatory issuance of notice by GoG. And when the Court found that Gujarat has not issued such notices it came down heavily on Gujarat, adjourned the hearings, continued the stay on the work of the dam, and asked the GoG to first complete the legal requirements. In its order dated 30th April, 1997, the Hon'ble Court said:

'The learned counsel for the State of Gujarat submits that certain steps are still required to be undertaken by the State of Gujarat for the relief and rehabilitation of individual PAFs and that after those steps are taken and affidavit shall be filed in this Court regarding the same. Learned counsel prays, therefore, that consideration of IA ... be deferred for the time being' (Emphasis added).

And in its affidavit dated 19th July 1997 filed by Gujarat it showed how it had issued individual notices with offers of specific lands for compliance with this Hon'ble Court's order. The State of M.P has not issued such individual notices of offer of land to all entitled PAFs. It is in the background of such a violation of the terms of Award by GoMP that it resorted to disbursing cash compensation in the name of SRP wherein the burden of responsibility to offer, allot and transfer land is reduced by mere payment in lieu of the legally entitled 2 hectares. This being the fact of the matter, to state, as GoMP does, that

SRP is valid just because some of the PAFs have availed of this package when in the eyes of law it is illegal; is untenable. Quite clearly, the GoMP cannot any longer be permitted to perpetuate this illegality.

8.6 Faced with this situation, the State of M.P, which has not only been showing its continued reluctance and inaction, resorted to a peculiar methods: It moved the Grievances Redressal Authority (GRA), which is meant as per the Award, to redress the grievances of the PAFs, and sought its opinion. The GRA, not realizing that it has no authority under the Award to entertain such requests gave an opinion to the NCA on 18.8.2005 that making a provision for SRP to an oustee family which has become entitled to allotment of agricultural land, cannot be said to be a provision which in any manner violates the provisions of the Award or directions of this Hon'ble Court, (pages 47-80 of the Counter affidavit by the State of Madhya Pradesh). The GRA thus decided to go against the Award and the judgments of this Hon'ble Court.

8.7 When this aspect was considered by the R&R Sub-Group of the NCA in its 62nd meeting on 12th September, 2005, it was observed as follows: -

'It is noted that the Government of M.P approached the GRA for opinion without offering land to PAFs and got the opinion, which is contrary to the deliberations and decisions taken in the meeting held on 25th July, 2005 and also the directions of the Hon'ble Supreme Court dated 15th March, 2005.'

In the said meeting, the Vice Chairman, NVDA stuck to its position to go ahead with the implementation of the 'SRP. On this, the Chairperson emphasized that the R&R programme should be as per the judgements of the Hon'ble Supreme Court dated 18.10.2000 and 15.3.2005 and as stipulated in the NWDT Award (Pages 191-192).

8.8 It may be pointed out that even before the said decision was taken by the R&R Sub-Group of the NCA on 12th September, 2005, the State of M.P had already passed a Government Order dated 16th June, 2005 for implementing the SRP (pages 143-146). This order ought to have been withdrawn by the State of M.P after categorical decision of the R&R Sub-Group on 12th September, 2005. But insisting on violating the terms of the Award and directions of this Hon'ble Court, the M.P Government took a step ahead and issued a Circular on 9th October, 2005 and also prepared work plan for disbursing cash compensation (pages 147-159). It is clear from page 151 that in Tehsil Kukshi, District Dhar, the State, in a great hurry, determined the entitlement of the PAFs as per the Award, dates of preparing SRP cheques and organizing camps for disbursement of cheques through its land acquisition and rehabilitation staff. This entire operation was done in the month of October, 2005.

8.9 The Applicant have dealt with the SRP in paras 13 to 20 of the Application, to which a reply has been given by the State of M.P in paras 8.9 to 8.11 and 9. Their submission is that this was not done on the demands of the local people of the submergence area, but was conceived and implemented by GOMP to absolve itself of its responsibility to provide land-based rehabilitation. They have not dealt with the specific statements made in regard to the decision of the R&R Sub-Group of NCA taken in its 62nd meeting on 12th September, 2005 which clearly stated that the SRP is against the terms of the Award and the judgements of this Hon'ble Court. The Applicant has reiterated their contentions about the illegality of the SRP in paras 13 and 15 of the Additional Affidavit. The Applicants have also put on record the Affidavits and FlRs (pages 160-165 and 181-183) to point out as to how the SRP was forced upon the PAFs. In the affidavit filed by one Sokliya Karsan (Applicant No. 41), it is categorically stated that he had refused to take the cheque but the same was still sent to him through Registered A.D. which he received on 6.1.2006. He has written about returning the said cheque. He has asked for irrigable and cultivable land as per the terms of the Award and directions of this Hon'ble Court.

8.10 In reply to para 11 of the Additional Affidavit of the Applicants, it has been stated by the State of M.P that the allegations of thrusting the SRP is incorrect as 'till date no such complaint has been made to GRA by any of the PAFs. In this regard, several Applicants who have filed complaints with the GRA are put in a tabular form, which is marked as **Annexure - 39.** No decision on the same have been given by the GRA in any of the cases.

8.11 That as far as the act of the State of M.P in implementing the SRP in its present form is concerned, as mentioned above, the same was implemented after June, 2005. According to the State Government's own counter-affidavit out of 3879 PAFs, only 2836 PAFs have been given 50% payment and the balance amount shall be paid after they purchase the land. It is not even disclosed as to when the said 50% payment was given and how it is possible to purchase 2 hectares of irrigable and cultivable land with that 50% amount, that too, before the date of submergence, i.e. before July, 2006. Also, in regard to 1043 PAFs it is stated by GoMP in para 6.8 that lands admeasuring 2325.686 ha in lieu of 1143.331 ha of their choice through the SRP has been given. However, in respect of these 1043 PAFs, GoMP has not given details as to how much land has been bought by those individual

PAFs with the SRP amount and where the house plots have been given. It may be noted here that in regard to the PAFs from Manavar Tehsil, District Dhar, it is clear that people have been able to buy land much less than their entitlement under the Award.

To give an illustration, a sample ATR of one out of 13 villages of Manavar Tehsil (261-266) has been filed. The persons entitled for 2 Hectares irrigable cultivable land (total 44 in no.) have purchased lands of the following extent:

Village Patwar:

S.No.	Name of the affected, and father's name	Land purchase by oustee (in Ha)
1.	PuniBaiKana	1.093
2.	Ram Kunwar d/o Kana	0.214
3.	Manish s/o Ram Chandra	
4.	Bhilia s/o Regya	1.044
5.	Ramchod s/o Bhilia	
6.	Shantosh Mansharam	C.743
7.	Jagdeesh s/o Babu	0.353
8.	Malsingh s/o Hadiya	0.088
9.	Kalu Malsingh s/o Malsingh	
10.	Mukut s/o Hadiya	0.088
11.	Ramu s/o Hadiya	0.088
12.	Babu s/o Hadiya	0.088

The Applicants have also prepared the total entitlement of land holding by eligible PAFs at 2 Hectares per PAF and the total land which they have been able to purchase in several villages and how much is the balance to purchase as per their entitlement. This has been taken from the samples ATRs of Manawar tehsil and orepared in a tabular form and marked as **Annexure - A 40.**

9. Meaning of rehabilitation and time-frame for R&R to be completed

9.1 The R&R programme is a compact one. As far as the eligible PAFs, whose 25% or more land is affected, they should get residential plots and irrigable and cultivable land in the rehabilitation village.

9.2 The 1995 Master Plan of the Union of India states that:

'A PAP is treated to have been resettled if the following activities have been completed for him:

i. Compensation for land and properties going under submergence if any, has been paid,

ii. Minimum 2 hectares irrigable cultivable agricultural land and house plots have been allotted at rehabilitation sites complete with all amenities, as per NWDT Award.

iii. Free transport has been availed of by him to shift materials or cash compensation in lieu of has been received by him.

iv. Ex-gratia payment, rehabilitation grant, subsistence allowance, development assistance for pucca plinth, house, etc as per respective state packages have been paid or partly paid.

v. Ration card has been issued to him at the relocation site.

vi. Education, drinking water, medical facilities, etc have been provided.

vii. Irrigation facilities/ vocational training provided.'

By implementing the SRP, the State Government is coercing the PAFs to buy the land wherever they find the same, thus getting rid of their liability to rehabilitate them on 'better-off principle' where they have the irrigable, cultivable land along with residential plots with developed facilities and amenities at the sites. This is besides the fact that the SRP has been implemented only from June, 2005 and it is beyond anybody's comprehension as to how within this limited period the PAFs will be able to buy the land and get themselves rehabilitated at the rehabilitation sites where even plots have not been allotted to them and even if allotted, in most of the cases they are far away, even 200 KMs away.

9.3 The whole idea of completion of rehabilitation one year before submergence has been completely subverted. In order to further dilute/violate their responsibility, the State of M.P has taken a wholly untenable contentions which only expose their gross negligence and violation in implementation of R&R programme. Those contentions are as follows: -

(i) A flagrant violation of time limit, within which the R and R should have been completed as per the stipulations of Supreme Court judgment, by GoMP is evident from the perusal of the submissions in paras 2.8, 6.2 and 8 3 in its counter to the Application and also para 5 of the Counter Affidavit to the Additional affidavit filed by the Applicants. It is preposterous to make the claim that GoMP is not bound by the legal requirement (but that only State of Gujarat is bound) to ensure that a year in advance of the submergence R and R must be completed as per the NWDTA. In fact, it is absolutely clear if Clause IV (2) (iv) is read along with Clause IV (6) (i) that both GoMP and Government of Maharashtra are bound by this stipulation of time. Therefore, there need be no doubt that provisions for rehabilitation, civic amenities etc. have to be provided by GoMP 'on the lines mentioned in Clause IV (1) Clause IV (4)' one year in advance of submergence. In the facts of the present matter, this means that by July 2005 this process should have been completed by GoMP for it to have received R and R clearance to raise the height of the dam. That this is not the situation as per GoMP's own admission in para 6.2 of the Counter Affidavit is clear. To quote, it says, 'In addition to this, there are other amenities that *are to be provided.....* in some of these sites the work for general facilities *is ongoing* and that is a commitment to NCA that this *would be over by May end.'* Further, one year stipulation applies to all the concerned States and that with regard to the State of M.P also it applies is clear from para 44, of 2005 Judgement of this Hon'ble Court.

ii) The second argument advanced by the State of M.P is that the distance between the R&R site and the irrigable & cultivable land to be given to the PAFs has not been mentioned anywhere in the Award or the judgements of this Hon'ble Court, This argument again exposes the State and its intention in not taking up the rehabilitation in the right earnest. It is unthinkable in the context of 'better-off principle' that the PAFs will have residential plots at R&R sites at a particular place and cultivable/ irrigable land miles away. The Applicant has pointed out that in the case of Tonsil Manavar, land has been offered at Borgaon which is at a distance of nearly 200 KMs from the house plots. If this is the manner in which the State of M.P is claiming that rehabilitation has been done, it will shock anybody's conscience, who is concerned about the protection of life and livelihood of the poor farmers, tribals who have been uprooted from their villages. This is besides the casual and irresponsible attitude of the State of M.P showing the utter lack of concern for the people even at the cost of violating the terms of the Award and the directions of this Hon'ble Court.

It has been clearly shown that GOMP is evading its responsibility of carrying out land-based rehabilitation. However, in addition to farmers, there are thousands of families following varying professions that live in the submergence villages of Nimad, including brick-kiln workers, hawkers, small shopkeepers, fisherfolk, boatsmen, artisans, etc. The NWDT Award recognizes all these different categories of people as 'oustees' and mandates their rehabilitation as well. However, it is submitted that the GOMP has no plan on how to rehabilitate and compensate all these different groups of people. In fact, in the 50th meeting of R&R Sub-Group, dated 29th August 2001, a package was devised for the rehabilitation of boatsmen (Kevat Samaj). However, the GOMP is not even implementing this package now. Hence, all these different categories of families will be displaced from their sources of livelihood without any rehabilitation at all.

10. <u>R&R Sites</u>

10.1 That as far as R&R sites are concerned, according to the State of M.P., out of 86 R&R sites, work in 75 sites is complete and in the rest of 11 R&R sites 'it cannot take more than a few weeks', The Applicants have taken photographs of 4 of the R&R sites out of the sites where State of M.P, has claimed that it is complete in all

respects. But what has to be emphasised is that all these R&R sites along with the amenities and facilities including money being available for construction of houses, and the actual construction of houses, should have been done much in advance so that PAFs could have completed the construction of their houses before submergence (which will take place in July, 2006). Even the CDs which have been filed along with the counter affidavit by the State of M.P. make it very clear that the R&R sites lie vacant and are not fully developed. This is not what has been envisaged in the Award and the two Judgements of this Hon'ble Court. Photographs of 4 out of 75 R&R sites are enclosed as **Annexure - A 41.**

10.2 What is most shocking about the R&R sites in M.P. is that the State has been consistently discriminating against the adivasi PAFs, in extending the R&R benefits, which are their legal entitlement. It bears mention that even while the permission to raise the height of the dam to 121.92m has already been given, there are no R&R sites for the adivasis affected even at 69m, living in the hilly interior area, ready for them to shift to before submergence. There are no R&R sites for the villages of Applicants 2-38. **Annexure - A 42** is a list of villages in Madhya Pradesh that do not have R&R sites. In the absence of R&R sites, the M.P. government is able to put pressure on oustees to accept Rs. 50,000 cash instead of house plots. Such is the situation in village Borkhadi, tehsil and district Badwani, which is a 100% hilly adivasi village that has no R&R site, and this is why PAFs are being forced to take cash instead of a legally-mandated house plot.

10.3 The State of M.P. has given some details regarding construction and status of the 8 R&R sites. Our comments to the same are:

(1) Nisarpur: It is denied that R&R sites are complete, let alone the R&R of the PAFs. There is no mention of the number of the house plots identified or allotted. Though there are 1653 PAFs at 121.92 Mts. only 1555 PAFs have been allotted house plots. It is submitted that not a single PAF, as of today, have been settled in Nisarpur. The other major draw back in this R&R site is that the roads are higher than the house plots upto 12 ft. making it practically impossible to construct houses there.

(2) Khujawa: According to their own submission, construction of school, dispensary, Panchayat Ghar, Seed stores, tree platform is yet to be commenced and electricity connection which is under construction would be ready only in the next few weeks. Even assuming they take six months for construction, by then not a single PAF would be settled if house plot is allotted, would be able to construct a house before submergence.

(3) Nimbola: According to them, the school, dispensary, Panchayat Ghar, seed store is still under construction and that the school building should not take more than 12 weeks for construction. Internal roads are still not ready, electrification is yet to be completed. Therefore, even if their own estimate of 12 weeks is taken for the purpose of construction, that would take us to 31st July, 2006, by which time there will be no question of building a house because the PAFs would be submerged.

(4) Morgadi: According to them, school, dispensary, seed stores, panchayat ghar, electrification, internal roads are all still under construction and would take couple of weeks.

5) Khalkhurd: Even in this village, construction of school, dispensary, panchayat ghar, seed stores, electricity work is all still under construction and will take few more months, which would take us to 30th June, 2006. Thereafter, how the PAFs be expected to build a house and resettled before the commencement of monsoon and submergence.

(6) Awalda: There is no R&R site for the village of Awalda as of today. In fact some of affected PAFs are being offered house plots in Bhamta. Despite there being no R&R sites, 267 PAFs affected at 121.93 Mts. are claimed as resettled. Their own statement is that the school and the panchayat ghar, electrification, internal roads are still under construction. When the R&R sjte itself is not ready then it is absolutely false that 267 PAFs could have been stated as resettled.

(7) Dharampuri: According to them, school, hospital, electrification, piped water supply, sanitation system are all still under construction and would take next 12 weeks to be completed and that too only the major work. Even according to them if R&R sites are not ready how can house plots allotted to 1788 PAFs are expected to construct house and resettled there. They will inevitably face submergence.

(8) Khalabujurg: According to them, school, hospital, electrification, piped water supply, sanitation system are all still under construction and would take next 12 weeks to be completed and that too only the major work. They will inevitably face submergence.

(9) Kasba Barwani 2 (Kukra): There is no agricultural land at site, water is inadequate. Water-logging in the site is a major problem.

(10) Borlai-1: This site is not completed. There is only one school room which has not been completed, plots are not adequate. There is middle school in the village but not at the site.

(11) Anjad (Barda): The site is not completed. The school building completed but not adequate. There is no middle school as there is in the village. There is no temple, ration shop, other such amenities at R&R site. No tap water system. Out of 7 hand pumps only 1 works.

10.4 The Group of Ministers (GOM) on 7th April, 2006 visited some R&R sites and submergence areas in Madhya Pradesh. Their report dated 9th April, 2006 has been annexed in the Application by the Union of India dated 17th April, 2006. This report has been countered by State of M.P. In this regard, the Applicants place on record their own clarifications and ground-level situation about the visit of the GOM and their report. This report is **Annexure - A 43.**

11. Verification of R&R. Gram Panchayat & PESA:

11.1 In Para-28 of the Application, the Applicants had categorically stated that R&R Sub-Group has not conducted any field visit to the submergence villages since November, 2000. Under the Award as well as the Judgments of this Hon'ble Court it was an obligation of the R&R Sub-Group to verify the ground realities and after collecting data, submit it before the NCA. The data in the form of ATR etc. which has been submitted before the NCA is without verification. This statement in Para-28 has not been denied in the Counter Affidavit. (See Para-12). What has been said is that GoMP has prepared the ATR with full sense of responsibility.

11.2 In this regard it will be apposite to point out that State of M.P, had issued a G.O. dated 29th August 2003 in which it is required that the consultations with the Gram Panchayats carried out as regards the relief and rehabilitation of the oustees. A true and correct copy of the G.O. dated 29.08.2003 issued by the State of M.P. is **Annexure - A 44.** Surprisingly, the State of M.P. itself is not following the said G.O.

11.3 The GoMP in Para-14 of the Counter to the Addl. Affidavit has submitted that in the first week of April, 2006, the ATRs were placed with the concerned Gram Panchayats. Contrary to its own G.O., the State has submitted that there is no such direction for submission of ATRs before the Gram Panchayats. The Minister for Water Resources who is also Chairperson of the Review Committee in his letter dated 6th March, 2006 had categorically stated 'the NCA as part of field verification of ATR has sent individual letters to all Gram Panchayats/Nagar Panchayats enclosing therewith the ATR of concerned villages so as to obtain their feed back within 10 days'.

11.4 It is clear from the stand taken by the GoMP that the ATRs were sent only in the first week of April, 2006. Therefore, no ATRs (which were prepared without field verification) were sent for field verification to the Gram Panchayats. The NCA in its clearance dated 8th March, 2006 (page 311) only stated that the policy of the State of M.P. in sending ATRs to Gram Panchayats 'is a good practice'. The NCA did not consider that without any field verification by any of the agencies to ensure that affected oustees have been rehabilitated, it granted the impugned permission. It may also be mentioned that it is clear from the 62nd meeting of R&R Sub Group dated 12th September, 2005 (Page 194) that though the State of M.P. had informed the R&R Sub Group that an agency—M/s. Santek has been appointed which has conducted pre-settlement surveys we have in some villages and submitted a report in July, 2005, the said report does not find any mention in the subsequent meetings of the R&R Sub Group on 8th March, 2006 or in the permission granted by NCA on the same date i.e. 8th March, 2006, though the GoMP had agreed to submit the report to NCA Secretariat within one months time.

11.5 The Applicants place on record the Resolution passed by the Gram Panchayat, Pipri dated 17.4.2006, where the non-compliance of R&R have been clearly pointed out. If this procedure was adopted, the true picture of R&R would have emerged. A true and correct copy of the comments of Gram Panchayat, Pipri is **Annexure – A 45.** The Applicants also have copies of Resolutions passed by Gram Panchayats Khaparkheda, Bhilkheda, Jangara, Bhavariya, etc but due to paucity of time these have not been translated into English as yet. These can be produced at a later date if required. The Bhavaraiya resolution details how much of the agricultural land of the village will

become a 'tapu', for which the GOMP has no plan for rehabilitation. The Jangarva resolution details the woes of families who consented to migrate to Gujarat but now are returning back in the thousands because they are unable to survive in Gujarat, the land that is allotted to them being uncultivable.

11.6 GoMP also states in para 22 that PESA Act 1996 does not apply to it. This is wholly untrue. It is not denied by GoMP that the submergence areas of SSP come sunder the specially protected Scheduled Areas under the Constitution of India. This being the case PESA Act, 1996 definitely applies to this region. In so far as PESA Act is concerned, there is no question of this Act overruling the law in force in regard to this project. On the contrary, PESA Act being a special protection measure under the Constitution this will be part of the law in force in these regions, in addition to the benefits provided under the NWDT Award and by the two judgments of the SC. However, both these legal requirements have already been violated by the GoMP and the construction is going ahead with full vigour despite these, among other, violations. Therefore, the best remedy at this moment will be to stop the construction immediately and give primacy to satisfaction of these preconditions.

11.7 Another important issue to note is that the total number of PAFs in Madhya Pradesh shown in the official Status Report (Annexed as A/37 above) is 33,014. It is submitted that GOMP has been claiming this total figure of 33,014 since 1995, when the NCA Master Plan was submitted in this Hon'ble Court. 11 years later and GOMP is using the same number even though thousands of major sons and others have got added on to the official lists since then. For many villages in M.P., land acquisition was done much after 1995, and hence many major sons have been added after this date. Hence, the falsity of M.P.'s figures is evident in that they have not revised their figure for total families affected in the state at full height of the dam and this has remained at 33,014. However, in the Annexure 2 of the Union of India's Application dated 17th April, 2006 in this Hon'ble Court, the total figure for M.P. figures at the full height is shown as 43021. According to the Applicants, the actual figure will be even higher since thousands of PAFs are left out even from these lists.

12. **The development argument by state of Gujarat: the truth :**

The Truth of Development argument in the affidavit filed by the State of Gujarat, by completely ignoring the importance of resettlement and rehabilitation, which is mandatory before and increase in dam height, it has been projected as if the stoppage of construction will result in an impediment to the process of development which will not be in the public interest. In advancing this argument, it is forgotten that oustees whose land and houses are taken have suffered in this process and any development at their cost cannot be said to be development in the true sense as every development should be meant for benefit of the people. These aspects have been analysed here in reply to counter affidavit filed by the Government of Gujarat and to give a true picture before the court.

TRUE AND CORRECT PICTURE AS TO THE BENEFITS FROM THE DAM:

1. It is submitted that the State of Gujarat in its counter affidavit has claimed that increase in height of the dam from 110.64 m to 121.92 m would lead to three kinds of benefits: Drinking water, Irrigation and Power. It is necessary that, before relying on these claims, they are closely examined as to see the picture in its correct perspective. It is also important, while examining these claims, to keep in mind the claims made by Gujarat government when the case for increasing the height from 100 m to 110.64 m was made, as can be seen from some press clippings that appeared at that time. Copies of some of these press clippings are being annexed hereto as **Annexure - A 46.**

2. Thus, when dam height was increased from 100 m to 110.63 m, State of Gujarat claimed that this will lead to:

- Availability of 3.5 Million Acre Feet (MAF) water for Gujarat and Rajasthan
- Additional irrigation to 2.18 to 5 lakh hectares.
- Increase in storage capacity from 2600 Million Cubic meters (MCM) to 3700 MCM.
- Sufficient water for taking drinking water to whole of Gujarat.

3. However, the correct factual position is far from these tall claims about benefits available at 110.63 mtr. made by the State of Gujarat which are mentioned below:

A. Drinking Water

According to the Sardar Sarovar Narmada Nigam's website (www.sardarsarovardam.org)

'A special allocation of 0.86 MAF of water has been made to provide drinking water to 135 urban centers and 8215 villages (45% of total 18144 villages of Gujarat) within and out-side command in Gujarat for present population of 18 million and prospective population of over 40 million by the year 2021.'

A copy of the relevant extract from the website of Sardar Sarovar Dam is being annexed hereto as **Annexure - A 47.** Thus, water required for providing drinking water to the full 8215 villages and 135 towns was available at 110.64 m in June 2004 itself, when total water available at SSP was 3.5 MAF as claimed by the State of Gujarat. The State of Gujarat's contention now that if the dam height is increased to 121.92 m, it will be able to provide drinking water to 4000 villages 57 cities/urban centers instead of 2044 villages and 57 cities/urban centers which is being provided currently is an attempt to mislead this Honourable Court and the people of Gujarat. It is submitted that if Gujarat had put in place the delivery system necessary to take drinking water to all the 8215 villages and 135 towns as per plans by June 2004, it could have provided drinking water to all the planned areas by June 2004. If it has not been able to do it, that is only because of its own lack of capacity to put in place the required delivery system and not due to lack of availability of water at SSP.

Furthermore, the CAG Report according to the Audit Report (Civil) for the year ended 31 March 2005 for Gujarat, prepared by the Comptroller and Auditor General of India (section 3.2), states as follows:

'Highlights: Sardar Sarovar Narmada Canal Based Bulk Water Transmission Project aimed at providing assured safe drinking water to scarcity-hit Saurashta and Kachchh regions. The master plan envisaged distribution of water through regional and group water supply schemes. The Project commenced in 1999-2000 was scheduled to be completed by 2002, but, was lagging behind due to defective planning and lack of co-ordination among different agencies. Water was being supplied only to 31 per cent of the projected villages and large number of villages and towns had to rely on local sources/water tankers. Some of the significant points noticed in audit are as follows:

=> Obtaining loan from commercial bank instead of Housing and Urban Development Corporation proved costlier by Rs.17.37 crore. (Paragraph 3.2.7.1).

=> Only 29 per cent of installed capacity of water was used and only 415 of 1,342 targeted villages/ towns were covered (31 percent). (Paragraph 3.2.8.3)'.

It is clear from a reading of the official Audit report that Gujarat planned to provide drinking water to all the villages of Gujarat by 2002. However, it has not been able to achieve this till date because Gujarat has been unable to put the required delivery system in place and not because of lack of availability of water from SSP. A copy of the CAG report for the year ended 31 March 2005 for Gujarat is being annexed hereto as **Annexure - A 48.**

B. Irrigation

As can be seen from the perusal of Annexure 1, when clearance was given to increase the height of the SSP dam to 110.64 in March 2004, Gujarat claimed that this will make available to Gujarat an additional 3.5 MAF of water and help achieve additional irrigation of up to 5 lakh ha. If we consider the fact that Gujarat plans to provide irrigation to 17.92 lakh ha of land from its share of 9 MAF from Narmada, we can see that from 3.5 MAF, it can irrigate more than 6 lakh ha. However, for this irrigation benefits to be realized, the full infrastructure of taking the water to the fields needs to be put in place. However, according to official website of Sardar Sarovar Narmada Nigam Limited *(Kindly see last line of table in Annexure - 2 the extracts from the official website of Sardar Sarovar Nigam),* Gujarat has been able to irrigate this year about 57,539 ha of land, less than 10% of what it claimed could be possible when the dam height was increased to 110.64 m. Thus, the claim of Gujarat in its affidavit now that if the dam height is increased to 121.92, it would be able to additionally irrigate 3.5 lakh ha is misleading and a futile attempt to cover up its failure to utilize even 10% of the water available at 110.64 m as per the SSP plans. Use of SSP water for release into rivers like Sabarmati, or into other lakes etc that Gujarat has been doing since August 2002 (when IBPT was inaugurated) does not find any place in SSP plans and is again a sign of failure on the part of Gujarat to utilize the water available at 110.64 m.

The water usage by Gujarat at 110.6 mts is summarized in the table below.

	Gujarat claims to have provided these benefits at 110.6 mts	Narmada waters used for these benefits
Irrigation	57, 539 Ha	0.29 MAF
Drinking water	Drinking water for 2044 Villages and 57 urban centers	0.25 MAF
Total		**0.54 MAF**

Note: a) since 0.86 MAF have been set aside for 8215 villages and 135 urban centers at the full height, it is proportionately about 0.25 MAF for Gujarat's claimed 2044 villages and 57 urban centres,

b) 9 MAF for 17.92 lakh Ha of irrigation at full height works to 0.29 MAF for 57,539 Ha.

Of the 3.5 MAF that Gujarat claimed was available at 110.6 mts, it used just 0.54 MAF for drinking and irrigation, going by its own claims of benefits provided. That about 3.5 MAF waters entered the canals is clear from the fact that CHPH power house generated 183.555 MU in 2005 when waters fell from the dam through its turbines to the canals. They entered the canals and were available, but were not used for drinking and irrigation since the canal network is not completed and support infrastructure isn't built. Thus they were poured in other rivers.

It is noteworthy to compare SSP's performance with other more local irrigation initiatives in Gujarat. As per page 15 the 'Socio Economic Review Gujarat State, 2004-05' published by the Government of Gujarat and annexed hereto as **Annexure - A 49**, an additional irrigation of 3,5 lakh ha [this figure was 2.15 lakh ha as mentioned on page 15 of 'Socio Economic Review, Gujarat State, 2003-04, similarly in the Gujarat Budget speech for 2003-4, Gujarat Finance Minister said in March 2003 that *'Approximately 2 lakh ha of irrigation potential has been created from check dam/ tank constructed in rainfed non irrigated area under Sardar Patel Sahbhagi Jalsanchaya Yojana'.]* has been achieved in Gujarat, as per the review, through *'indirect benefits through water conservation programme'*. This benefit has mostly come about in Saurashtra, largely over the last five years and in this effort the local communities have played a very big role. It is also relevant to note here that the total expense on this effort has been less than 10% of the money spent on SSP so far (over Rs 21, 000 crores). It may be recalled that total area to be irrigated by SSP in Saurashtra is almost the same figure at 3.86 lakh ha. This only illustrates that alternatives to SSP for Gujarat exist and they provide faster benefits, that are much cheaper, and they come without the huge social and environmental impacts that SSP has.

C. Power

Many contradictory claims are being made about power generation possible if the height of the Sardar Sarovar Dam is increased from the current height of 110.64 m to 121.92 m. Simple physics tells us that actual power generation would depend on three factors: quantum of water available for power generation, height through which the water falls and availability of power generation units (machinery). If all other factors remain constant, then power generation would be directly proportional to the height through which water falls. Thus, the loss of power if height of the dam takes a pause at 110.64 m instead of raising it to 121.92 m would be about 12% for power generation from River Bed Power House (RBPH) and 35% for power generation from Canal Head Power House (CHPH). Taking into consideration the fact that in 2005-06, of the total power generation at SSP, CHPH generated 9.3% and RBPH generated 90.7%, the loss in power generation at SSP if the dam height is halted at 110.64 m, would be 14.14 %. Thus, if the claim is that SSP can generate 400 crore units at 121.92 m, then the annual loss in generation, if the dam height takes a pause at 110.64 m, would be 56 crore units. This more or less matches with the SSP engineers' claim on NDTV of 550 MU (or 55 crore units) loss in electricity generated if dam is not raised to 121.9 mts. (NDTV report of April 15 is on their web-site and is attached as Annexure). As stated in the Annexure, the loss figure also takes into account the additional storage available.

Since the dam has already been raised by 2-3 m beyond 110.64 m, if dam construction is halted at this time, the loss will be slightly lower than 55-56 crore units. Thus the claim made by Gujarat government in its affidavit that increase in dam to 121.92 mts would lead to additional 350 crore units of electricity generation at SSP is totally baseless. In fact the increase due to additional height will only be 55 crore units, equivalent to Rs 110 crores (@ Rs 2 / unit). Gujarat not only shows an exaggerated figure of 350 crore units but also by valuing the SSP electricity at Rs 4 / unit (SSP electricity is costlier than average) it comes up with a grand total of Rs 1400 crore for the benefit due to height increase, while actually the benefit is Rs 110 crores.

While the increase in height to 121.92 leads only to a marginal increase in power, there is a significantly different reason why we should expect more electricity in the coming year than in the previous year. The dam height of 110.64 m was reached in June 2004. Thus, if all the power generation units were in place by that date (it should have been as installation and dry test run of power generation units do not depend on increase in dam height), all the units could have started generation from July 2004. However the 5 turbine generator units of Canal Head Power House (each of 50 MW were commissioned only in the period Aug 2004 - December 2004. That's when SSP's power started trickling in, 5 of the 6 units of the River Bed Power House (each unit of 250 MW) where commissioned one by one every 3 months or so from February 2005 to March 2006. The final unit is yet to be commissioned. In 2005, RBPH produced 1550 MU of power as its units began functioning one by one. However as it was not commissioned in 2004, it didn't produce any power, though the dam was constructed to 110.6 mts in June 2004 which is where it remained in 2005. In 2006, more power is expected simply because 5 units of RBPH are already functioning when the year started in January 2005, while last year none were functioning. Taking into account the seasonal variation in water flow at SSP, in the 21 month period between July 2004 and March 2006, SSP could have produced about 667 crore units even though the dam was at 110.6 mts. In reality, it produced 221.5 crore units *(Kindly see Annexure - 47 the extracts from the official website of Sardar Sarovar Nigam).* Thus, SSP produced about 445.5 crore units less than what it should have produced in this 21 month period. This massive under performance and loss is entirely due to the inefficiency and mismanagement of the Sardar Sarovar Nigam and responsibility needs to be fixed for this loss. This loss is more than what SSP would loose even if height is halted at 110.64 m for over 8 years. It does not seem that power generation is a big priority at Sardar Sarovar Project. It is also relevant to note here that T&D losses in the three beneficiary states (Gujarat: 32.36%, Maharashtra: 36.62%, Madhya Pradesh: 37.71%) are much above the accepted norms of 15-20% and that little efforts are being done to reduce the losses. It is submitted that there is little justification for increasing the height of the SSP dam to 121.92 m even from power generation point of view, till acceptable, legal and just R&R is achieved.

4. Another false and misleading claim which has been made by the State of Gujarat is regarding the Water Diversion from SSP. The State of Gujarat has claimed in its affidavit that water for any purpose cannot be drawn below 110.64 m is again false and misleading. Gujarat in fact has been using water from SSP since at least 5-6 years Before August 2002, it was pumping water from the existing reservoir into the canal. Between August 2002 and August 2004, it was diverting water through the IBPT (whose off take is at about 89 mts) and since August 2004 is has been diverting water through the CHPH, *(Kindly see Annexure - 47 the extracts from the official website of Sardar Sarovar Nigam).* This water has been used for all the designated purposes of drinking water supply, irrigation and for power generation. It is submitted that here it needs to be kept in view that Narmada is a perennial river, so some water is always available in the river. Moreover, with the construction and commissioning of the massive Narmada Sagar Project upstream on the Narmada river in Madhya Pradesh in January 2004, the downstream SSP has received regulated releases from the upstream dam that stores the monsoon flows and allows gradual release of water across the river.

5. The balance of convenience therefore clearly dictates that the height of the Dam be paused at the present level, till the rehabilitation of all the oustees who would be affected at 121.92 M is satisfactorily completed as required under NWDT award and Supreme Court orders. This time should be used by Gujarat to complete their canals, water pipelines and other infrastructure needed to deliver the water which is already available and which would be available at the increased height. They should also use this time to complete the installation of the remaining power generation unit/turbines and complete the infrastructure of the power stations.

13. R&R in Gujarat:

In para 5 of the counter affidavit, the GOG states that they have completed the R&R of PAFs who opted to stay in Gujarat. Gujarat has, in fact, for many years been claiming that the rehabilitation of the PAFs in the state has been completed. However, the situation on the ground is very different. Merely the shifting of families to the R&R

sites does not and cannot constitute full rehabilitation as envisioned in the Award and judgements of this Hon'ble Court. There are hundreds of families living in the R&R sites in Gujarat who have been given bad uncultivable land. Most of them have been demanding for years for the land to be changed, but there is no response either from the GRA or from the government. Jayanti Chima (Baroli vasahat), Vachan Chota (Depha), Bhuvan Dholji (Parveta), Kamji Gopal (Krishnapura) are just some examples of PAFs with bad land. In fact, the largest number of petitions pending before the GRA-Gujarat pertain to change-of-land requests due to uncultivability. However, Gujarat has, for many years, stopped purchasing any more land, hence the grievances of these PAFs remain unfulfilled.

PAFs also face severe problems of water-logging in the monsoon, in their fields as well as their homes. Baroli, Krishnapura, Parveta R&R sites face serious, water-logging which has not yet been rectified by providing proper drainage network. Several PAFs in the vasahats have been allotted less than 5 acres of land. Again, repeated requests to survey the lands and address the grievances have not been paid heed to.

Hundreds of major sons have been left out of the PAF list, as a result, they may be at the R&R site but have not been allotted land or granted any sort of relief. For example in Karnet vasahat, where families of Makarkheda have been resettled, there are several major sons who are over 40 years old, some of them such as Chimabhai have grandchildren, but yet they are not declared as major sons, since they are told they have no proof of age. Similarly, many widows have not been given their due entitlement of land, such as Vajiben Undla in Kamboiakuan vasahat. As a result of these reasons, the standard of living of the Gujarat PAFs has been coming down, and they are increasingly facing issues of migration, doing daily wage labour in nearby cities such as Surat.

With severe livelihood problems at the R&R sites, many families are choosing to leave the R&R sites and return to their original villages on the banks of the Narmada river. PAFs are moving back to their villages such as Mukhdi, Gadher, Karda, Makadkheda, Antras, Hapeshwar.

There is no proper 'tapu' survey in Gujarat. Villages like Karda and Turkheda is likely to become marooned and hence should also be surveyed and rehabilitation measures extended to the affected families. In Gujarat, a large number of families are affected by the canal network, the dam colony, the sanctuary, etc. These persons are not even considered as PAFs and thus not entitled for rehabilitation. For example, the land of those affected by the colony was acquired in the early 1960s. Till date they are not considered PAFs, thus not offered land-based rehabilitation. Since the early 90s, they were offered a meagre Rs. 36,000 which was supposedly for buying three acres of land. However, at today's prices, this amount remains the same and it cannot even buy half an acre of land. Now they face eviction from a large eco-tourism project that is being planned at the dam site, on 1400 hectares, which was land acquired for the purpose of the project but now is being used for private interests. Hence the situation of rehabilitation in Gujarat can in no way be called as completed. There are a host of problems in the original villages and in the rehabilitation sites and hence Gujarat cannot give the false figure of 'zero' balance for rehabilitation. These are preliminary issues being raised in reply to the Counter Affidavit filed by the GOG. If necessary, this can further elaborated upon.

14. <u>Comments on Maharashtra R&R</u>

14.1. That the GoM has apparently missed one of the most critical issues raised in the Additional Affidavit, which clearly establishes that the R&R in Maharashtra is lagging behind at 121.92m and hence stands in violation of the NWDTA and the Supreme Court judgments. Further, the GoM falsely states and concludes that the GoM has rehabilitated all PAFs upto 121.92m. The GoM thus stands in contempt of Court since it seeks to mislead the Court by hiding the information on the actual status on R&R and continuing to stand by the ATRs that it has submitted.

14.2. That these actions of the GoM will result in the illegal violations and submergence of adivasi communities that having been residing for centuries on the banks of the Narmada. It is submitted that the Supreme Court has taken a very strong position with regard to the rehabilitation of these adivasis inasmuch as that it held that the displacement of adivasis does not violate their rights per se since they are being rehabilitated. The Court further held that rehabilitation of adivasis must be land - based for compliance with ILO 107. It is submitted that land rights of these adivasis in their submergence villages has not been settled even to date.

14.3. That these Petitioners had placed on received extracts from the report of the M&E Agency, Yashada, Pune appointed by the GoM. According to this report, there are 1174 number of declared PAFs and 2120 number of undeclared PAFs at 121.92m. The report is based on a 2 year - long survey carried out by a full - fledged research

team of the agency in the submergence villages and R&R sites. Yashada report clearly concludes that there is a backlog of PAFs at lower levels as well. We understand that the first draft of the report was ready on 23rd November 2005 and the second draft was ready on 30th January 2006 while the third and final draft was ready on 14th February 2006. The first two drafts were submitted and discussed with the government officials. But this information was not discussed or disclosed with the R&R Sub -group, GRA or the NCA even though the discussions were on to raise the height of the dam from 110.64m to 121.92m.

14.4. That the report estimates that the GoM needs 6300 ha. of cultivable and irrigable agricultural land is all balance PAFs are to be rehabilitated.

14.5. That the report clearly indicates that there are serious violations in R&R that has led to submergence of homes and agricultural lands in the submergence villages without their rehabilitation being carried out. That the report also concludes serious violations with regard to the PAFs who are claimed as rehabilitated at the Maharashtra R&R sites. The report concludes, among other serious issues, that:

- 7/12 i.e. land titles of the land allotted to PAFs has not been given despite PAFs having been shifted to the R&R sites more than a decade ago. This is a violation of the Land Revenue Code.
- There are families that have been shifted to R&R sites yet have not been allotted agricultural land or house sites or both.
- There are PAFs who have got declared after shifting to R&R sites yet have not received agricultural land and house plots.

14.6. That there are other serious issues that need to be brought to the attention of this Court immediately.

14.7. That the land rights of PAFs in their submergence villages, as stated above, are yet to be resettled. There is a case pending before the High Court in Mumbai in which there are two orders have already been passed (WP 4629 of 2001) resulting in the Maharashtra government making a proposal for diversion of more than 13000 hectares of forest land to which the Ministry of Environment and Forests responded with its directive approving granting of rights over 4073 hectares of forest land to families in 73 villages out of which 24 are SSP affected villages. These rights are not granted yet because of the pre - condition stipulated that the decision of the Supreme Court in the case on forest rights (Godhavaram case) should precede granting of rights.

It has been admitted that the adivasis are legally cultivating 4073 ha. of land covering the forest area. But this has not been taken to its logical end due to certain legal implications. But the consequences of this is that those who are actually landed PAFs are recorded as landless, which implies that their entitlement to land in rehabilitation is only 1 ha as per the 1991 government order of Maharashtra. That the adivasis thus end up being entitled to lesser land in rehabilitation that is legally due to them. This has adverse impacts on the life standard of the adivasis after rehabilitation and is a violation of the Supreme Court's decision that states that the standard of living of PAFs, on rehabilitation, would be equal to or better than their previous standard of living.

14.8. That the Principal Secretary (Rehabilitation) Shri K.Vatsa, in his letter has stated that the judgment of the Supreme Court in 2005 is not applicable to the State of Maharashtra. According to this official, only landed major sons would be entitled to land in Maharashtra. A copy of the letter of Shri K.Vatsa is placed as **Annexure - A 50.**

14.9. That, with regard to land availability for R&R in Maharashtra, the overall situation is such that there is no land for the rehabilitation of balance PAFs. The reason is that even of the lands that have been made available, large chunks have turned out to be un-allotable since they are in naalas, uncultivable, etc. Between 1990 and 1994 a total of 4200 hectares of denuded forestland was released for the rehabilitation of Maharashtra PAFs. Of this, 1500 hectares has been found to be unallotable and the government, after relentless pressure from NBA, agreed that this needs to be replaced. The State Cabinet in January 2004 has held that this 1500 ha. need to be substituted immediately for the R&R of the remaining PAFs. This is yet to be done despite repeated pleading and the proposal to be sent to the Uol is still due.

That the GoM has started purchasing land after 2000, however, some of the land purchased has been found to be uncultivable such as at the T&T site, Tarawad and hence those who accept it fell cheated while the others refuse to accept the allotted lands.

14.10. That the GoM has resorted to allotment of land ex-parte despite its decision not to do so which was even communicated to the NCA vide letter placed as Annexure 2 in the WP 328 of 2002. That these ex - parte allotments are being made despite the fact that there are families shifted to R&R sites and not provided land as per Yashada report. As such then there is no land for the families who are still residing in the submergence villages including those who are affected under 80m. This has been discussed with the government repeatedly in the various meetings of the Planning Committee, which has been established by the GoM and also has various non - government members including NBA representatives.

14.11. That the GoM, as other governments, is claiming that there is the necessary mechanism for monitoring R&R satisfactorily. This could not have been any more further from the truth.

14.12. The R&R Sub - group referred to has not conducted its mandatory field visits for the past 6 years. In fact it has been much longer since the R&R Sub - group has visited the submergence villages in Maharashtra. That the Respondents suggest that the Director of NCA conducts visits even when the R&R Sub - group fails to do so. It must be noted here that even this Director has not visited the submergence villages in Maharashtra. It is further submitted that in any way these visits by the Director, NCA is not and cannot be passed as the substitute for the visits by the R&R Sub - group which is mandatory. It is also important to note that while the R&R Sub - group field visit reports were public documents, there has been report of any such supposed visit of this Director which has been made public to date.

14.13. That the GRA has also not visited the submergence villages since 2000. However, he holds the GRA hearings at the tehsil and district headquarters, which is appreciative considering that the GRA - Madhya Pradesh holds its hearings at Indore and Bhopal, which are hundreds of kilometers from the submergence villages. However, he concentrates on declaration of major sons and not other issues.

14.14. That the GoM is supposed to commission a suitable and capable agency for the M&E of R&R process to which extent Yashada has been appointed. The conclusions of this report have emphatically point to the serious violations in the R&R process in Maharashtra.

14.15. That the GoM has set up several Committees with non -government members but even their conclusions and suggestions are neither taken up nor implemented. That one of these committees established by the GoM, was appointed in January 2000 under the chairmanship of Jst Daud and having Shri Manekrao Gavit, Member of Parliament for the constituency in which the submergence area and rehabilitation area falls, as its member. The report of the Committee is very detailed and based on a year - long investigation that included visits to the valley, discussions with the officials, etc. and provides a very accurate picture of the situation in the submergence villages and the R&R sites as well. The recommendations of the Committee were accepted by the Cabinet in September 2001 but not implemented in letter and spirit. If only this has been done a lot of problems being faced with R&R to date would have been amicably resolved.

14.16. That another committee set up is the Task Force for enumerating the exact number of affected families who are yet to be rehabilitated. It identified all the PAFs who are entitled to rehabilitation but have somehow not been declared yet. However, no decision has been made to assess the claims of undeclared PAFs as soon as possible. This has taken too long since the Task Force gave a full list of declared and undeclared families in July 2002. This was not accepted fully and instead has undergone another set of verification and checking at various levels. Now finally the GoM has taken to decision towards resolving this serious problem and lacunae in the R&R process.

14.17. In addition to these Committees was the one appointed to survey the tapu areas in Maharashtra. This Joint Committee has completed its survey and in its report recommended which hamlets and families must be declared as PAFs and has further recommended which other hamlets/villages need further surveys. This process is yet to be taken to its logical end.

14.18. That there are several issues that need to be looked into. For instance, as new PAFs get declared and added to the list of affected persons, the GoM has not acquired their properties as required by the Award and the Land Acquisition Act.

14.19. That it is clear that the violation of the time- frame mandated by the Award and the linkages between construction of the dam, submergence and rehabilitation has resulted in the illegal submergence of adivasis' homes and lands without their rehabilitation.

- Houses and farms of 13 families in Manibeli were submerged in 1993
- Houses and farms of 136 families in various villages in both Akrani and Akkalkua tehsils in 1994
- In 1997-98, 26 PAFs were affected by submergence without being rehabilitated
- In 1999, 170 families faced submergence without rehabilitation
- In 2002, 365 families
- In 2003, 700 families in Akrani and 342 families in Akkalkua.

The GoM as a result of the people's struggle compensated for these losses of the above - mentioned families from 1999 to 2003. They surveyed the losses in 2004 but did not give compensation. This info is listed in the Task Force report prepared under the Chairmanship of the Nasik Commissioner on pages 440-450, Annexure 19 (e).

14.20. That the decision taken on 8th March 2006 to raise the height of the dam is illegal and in violation of the Award and Supreme Court judgments.

Post this decision was made, meeting of the Planning Committee and Overview Committee was held in Mantralaya under the Chairmanship of the Rehabilitation Minister on 20th March 2006. In the same meeting, all the non - official members including the Local MLA, Shri Padmakar Valvi, have issued a letter to the GoM, condemning the decision and demanding stoppage of construction until all rehabilitation is complete in the submergence villages and R&R sites. They feared a human tragedy of submergence leading to atrocities against adivasis affected by the Sardar Sarovar dam. The Minister in Chair agreed to take up the matter to the cabinet along with the Yashada report and convey the decision to the Union of India.

14.21. Despite the compelling evidence and the report of Yashada, the false ATRs are yet to be withdrawn though the Chief Minister of Maharashtra has taken a position against further construction in the meeting of the Review Committee of Narmada Control Authority held on 15.4.2006.

15. That in view of the facts mentioned in the Application, 2 Additional Affidavits and Present Rejoinder Affidavit, the Applicants pray that all PAFs affected upto dam height 121.92m be rehabilitated in terms of the NWDTA and the judgements of this Hon'ble Court in 2000 (10) SCC 664 and 2005 (4) SCC 32 and that till completion of the R&R, no further submergence be permitted. The decision of the Narmada Control Authority (NCA) dated 8th March, 2006 being in violation of the Award and judgements (supra) of this Hon'ble Court be quashed and in the meanwhile this Hon'ble Court in the interest of justice, taking into consideration the prima facie case and balance of convenience suspend the decision dated 8th March, 2006 and consequently further construction of the dam.

Drafted and Filed by;
Anitha Shenoy, Advocate for the Applicants

Settled by: Sanjay Parikh, Advocate
New Delhi
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