WHY THE DECISION GRANTING PERMISSION TO RAISE THE HEIGHT OF DAM TO 95m (+ 3m HUMPS) IS ILLEGAL!

On 17th May 2002 the Narmada Control Authority took the decision to permit further construction of the Sardar Sarovar dam from its present height of 90m (plus 3m humps) to 95m. The repercussions of this decision will be to render **around 8000 families in 3 States highly vulnerable to submergence in the coming monsoon.** At 95m, 19 villages in Gujarat, 33 villages in Maharashtra and 70 villages in M P will be severely affected. The affected populations still live in their villages. A majority of the affected persons at this height are adivasis. In fact the Maharashtra and Gujarat villages are almost 100% adivasis while about 55 of the 70 villages in Madhya Pradesh are around 90% adivasis. However, now the submergence at this level is no longer limited to small Adivasi hamlets and 'padas' in the Vindyas and Satpudas, but has spread to the plains to the highly populated villages and at least one-two towns such as Nisarpur. The decision of NCA in effect means the decision to submerge some of the world's richest and most productive agricultural areas along with its small towns, temples, schools hospitals and culture.

The governments and NCA claim that these affected families have been rehabilitated. However, the fact of the matter remains that these are just claims on paper. It is important to understand what the process of resettlement has been envisaged as.

The Narmada Water Disputes Tribunal Award (NWDTA) has a number of landmark features as far as the directions for resettlement and rehabilitation go reflecting its keen concern for, and, clarity about how livelihoods must be restored to the affected people and how they cannot be and must not be simply flooded out. Regarding entitlements the Tribunal ruled that:

- Firstly livelihoods of landholders must be restored by provision of alternate land in place of cash compensation hitherto given under Land Acquisition process. [NWDTA XI IV (7)]. Land-for-land as the basis of the rehabilitation, as against mere cash compensation under the Land Acquisition Act.

- Secondly it deemed that the affected population had a right to the share of prosperity of the command area by being rehabilitated on irrigable lands in the command or irrigable lands in their own state with irrigation provided at the cost of the government. [NWDTA XI IV (2)(iv)].

- Thirdly it recognized that affected people had a right to choose between Gujarat and their home states for their resettlement. [NWDTA XI IV (2)(I)].

- Fourthly it ruled that villages must be relocated as a community and asked for the setting up of "rehabilitation villages" along with all the amenities necessary for a village. [NWDTA XI IV (1) & IV (2)(iv)].

- Fifthly it insisted that provision for rehabilitation must be well in advance of project construction, in fact it said that within two years of the Tribunal Award (by 1981),

lands required for those to be affected below FRL 350 ft must be acquired and be made available according to the choice of the oustees. [NWDTA XI IV (2) (i)].

- Sixthly, requirement that a master plan of resettlement be ready in the early stages of the project (even though the words master plan were not used), including identification of the land, setting up of "rehabilitation villages" etc. within 2-3 years since declaration of the Award i.e. by 1981-82.

Regarding linkages between submergence, displacement and rehabilitation, the NWDTA ruled that:

Firstly, irrigable lands must be made available for the rehabilitation one year in advance. [NWDTA XI IV (2)(iv)], and

Secondly that "in no event should any areas of M.P. and Maharashtra be submerged unless all arrangements are made for the rehabilitation of the oustees and intimated to them". [NWDTA XI IV (6)(ii)].

In the case of B.D.Sharma vs. Union of India and Others, Writ Petition No. 1201 of 1990, the Supreme Court has ruled that **rehabilitation has to be completed six months prior to submergence** in all respects.

Therefore it is within this framework that the process of rehabilitation should be carried out. The scheduling of displacement, rehabilitation and submergence are unambiguous and, importantly, legally mandatory.

When the status of rehabilitation of those affected at 90m and those who will be affected at 95m is examined within this framework it is seen that violations have been committed already and further will ensue if stay is not immediately granted.

1. **Those affected at 95m have not been resettled still!**

Madhya Pradesh:

- Madhya Pradesh government implicitly admits that it has not resettled every family who has been identified as affected at 95m since it has differentiated between permanent and temporary submergence and claims to have only resettled those affected by permanent submergence. This is illegal since it has been decided in the Supreme Court and NCA that no such differentiation on this basis will be made.
- Gujarat has made ex-parte allotments to 253 affected families from Madhya Pradesh inspite of the fact that many of them have, in the past and even after receiving ex-parte notices, informed the state government, by virtue of the choice offered in the NWDTA, that they prefer to resettle in Madhya Pradesh itself.
- There is no cultivable agricultural land available for families entitled to land in Madhya Pradesh.
- The required number of Resettlement sites has not been developed in Madhya Pradesh. According to the government, out of the required 28 sites only 9 are ready.

- Most of those affected families who are only entitled to house plots have been paid house compensation. However, except for in 2 sites none have shifted out of their original villages and relocated to the resettlement sites. This is so since for most there is no resettlement site since these sites have not been developed as pointed above. These families are, as of today, residing in houses that are slated to be affected by the submergence caused by 95m dam height.
- The government has also offered cash compensation to those entitled to agricultural land in M.P. This is illegal and violates the Narmada Water Disputes Tribunal Award since the NWDTA directs the states to replace the agricultural land affected by submergence with replacement cultivable agricultural land. However, since the government is not doing this, left with no choice some have accepted. However the government will have to allot cultivable agricultural land to even these families.

Maharashtra:

- Maharashtra has never claimed that it has resettled all families affected at 95m.
- The survey to enumerate the actual number of affected families (at full dam height and intermediate levels including 95m) has just been completed in Maharashtra. The Task Force, a committee constituted by the government consisting of officials, activists and affected persons, conducted this survey. The *prima facie* findings conclude that the balance families to be affected at 95m will increase from the present 17 families to more than 500 families (conservative estimation).
- In Maharashtra, the land rights of the adivasis in the original villages have not been granted yet. One part of this process, the regularizing of forest encroachments, is being carried out in compliance with the Supreme Court directive issued its final order in 1995 in case of Pradip Prabhu Vs Government of Maharashtra. The land owning status of these adivasis, most of who are affected at 90m or will be affected at 95m, will only be known only after this process is complete. If their lands are submerged now, midway through this process, they will be denied what they are entitled to in rehabilitation. E.g. One who is regarded as an encroacher and entitled to only 1 hectare of land, may after the process be considered as land holder and entitled to at least 2 hectares or the land he/she owns subject to state ceiling.
- There is no agricultural land available in Maharashtra as of today though it is trying to purchase / acquire private land.

2. The resettlement of 95m affected families was not completed by December 2001.

The Supreme Court and NWDTA requires that the agricultural lands should be made available to the families to be affected one year prior to submergence. This means that the resettlement sites too, with all civic amenities should be ready by this time and 6 months before intended submergence the families should have been rehabilitated. This means that if the NCA intended to construct the dam up to 95m by June 2002, then all rehabilitation facilities should have been made available in June 2001 and by December 2001 all families to be affected must have been rehabilitated.

This did not happen. The required rehabilitation facilities; resettlement sites, agricultural land and civic amenities are yet to be made available so there was no chance that these families could be rehabilitated today, let alone December 2001. That these families were not rehabilitated by December 2001 is accepted by the governments and NCA themselves and obvious from their various documents.

3. Rehabilitation of 90m families not yet completed.

The issue of whether clearance is legal or illegal and whether stay should be granted also depends on status of rehabilitation of those who are already affected at 90m and below.

The Supreme Court, on October 18th 2000, permitted further construction of the dam from 88m to 90m directing that the rehabilitation pre-conditions would have to be fulfilled for those affected at 90m[1]. What has happened however is that while the construction was completed within the next month the rehabilitation was ignored resulting in a situation where even today there are more than 3000 families affected at 90m who are yet to be rehabilitated!

This did not happen and in May 2001 NBA submitted to the NCA and the three Grievance Redressal Authorities (GRAs), village-wise person-wise details of about 3500 families affected at 90m but not rehabilitated. While the GRAs took no action the Rehabilitation Sub-group directed the state governments to verify these lists and stated that until it was ensured that the rehabilitation of 90m affected families has been completed no further construction of the dam should be allowed. Pursuant to this direction the NCA directed the states to undertake field verification of the lists. The follow-up by the states is:

a.) Gujarat - Has not conducted field verification. It however submitted a rejoinder to NCA claiming that all these families are resettled. Actually though these families are still in their villages having had their lands submerged already.

b.) Maharashtra - In Maharashtra, the 'Committee to Assist Rehabilitation of Affected Persons in Maharashtra", (commonly referred to as Daud Committee) formed by the Maharashtra Government under the chairmanship of Justice S. M. Daud (retired) has found and stated in its Report that in Maharashtra 90m affected families have not been rehabilitated and the Government has no agricultural land for them. It has also recommended that until these families were rehabilitated the government should not approve of any further construction. The initial findings of the Task Force confirm that there still are affected families at 90m who are yet to be resettled. Further it is found that there are at least 100 families who are yet to be allotted land inspite of having been shifted to the Resettlement sites. Incidentally many of these families have had their properties affected between 80m-90m.

c.) M.P. - Has begun a joint desk-top verification of the lists. The government has promised that pursuant to the completion of this process field verification will take place.

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[1] At the time of the judgment the Governments had claimed they would complete rehabilitation of 90n-affected families by December 2000. It was on the basis of this that the Supreme Court allowed construction up to 90m.

Obviously the families affected at 90m have had their lands submerged but have not been rehabilitated. It is imperative that even before considering any further construction the field verification of 90m affected families should be completed and those affected rehabilitated before talk of 95m is initiated.

4. **The Grievance Redressal Authorities (GRAs) have not verified the field position of 95m**

There has been no field verification by the GRAs to ensure whether the rehabilitation of 95m affected families has been completed or not. This is so since they lack the infrastructure and staff to carry out the necessary field verifications.

Further, the affected families have repeatedly approached the GRAs with the various grievances they have but inspite of this there has not been much relief. The GRAs do not have the infrastructure to handle the mammoth scale of the grievances of the affected families.

5. **Those relocated to the sites cannot be claimed to be resettled.**

GUJARAT: From the resettlement sites in Gujarat the GRA received more than 15000 complaints of which more than 9000 were related to land problems such as uncultivable lands, less land received, dabh weeds infected land, saline lands, waterlogged lands, no drinking water, etc. This shows that the resettled families were facing severe problems, which have not been resolved.

MAHARASHTRA: In Maharashtra, the Daud Committee first and now the Task Force have brought to light the various illegalities and violations in the rehabilitation process. Hundreds have received either fully or partially uncultivable land. There are problems with availability of drinking water, roof tiles, etc. There are also hundreds of affected people who are yet to be declared as "project affected" and hence have not received any thing by means of rehabilitation.

THESE ARE SOME OF THE COMPELLING REASONS AS TO WHY NO PERMISSION SHOULD BE GRANTED TO INCREASE THE HEIGHT BEYOND 90 METRES.