

# FORFEITING OUR COMMONS

**A CASE FOR PROTECTING AND CONSERVING CHALLAKERE'S AMRIT MAHAL  
KAVALS AS LIVELIHOODS-SUPPORTING, BIODIVERSITY-RICH AND ECOLOGICALLY-  
SENSITIVE GRASSLAND ECOSYSTEMS**



Submitted to:

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Expert Committee constituted by the  
Honourable National Green Tribunal (Southern Zone, Chennai), India

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Applicant 6/2013

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**June 2013**

## ACKNOWLEDGEMENTS

This report has been written and compiled by Leo F. Saldanha, Bhargavi S. Rao, Aishwarya Rao, Davis G. Thomas, Abhayraj Naik and Shashikala Iyer of Environment Support Group, Bangalore. We thank our associates in extending help and cooperation in so many ways in the preparation of this report.

We thank Manohar Patel of Maithreya Trust for his extraordinary effort in collating a variety of material with the use of the Right to Information Act and that over several years. This has immensely helped in piecing evidence about the diversion of Challakere's grasslands.

N. M. Ganesh Babu, Santosh Martin, Samad Kottor and Abi Vanak Tamim readily supported us by preparing notes based on their primary research work. Sheshadri Ramaswamy helped review a range of literature that has helped in preparing this report. Jahnavi Pai, Vinay Sreenivasa, T. B. Dinesh, Arjun Swaminathan, K. R. Mallesh and several others have supported the formulation of this submission with a variety of critical inputs. Similarly, Raju Kasambe supported the effort by providing literature from the Bombay Natural History Society archives and Mark Chernaik of ELAW supplied interesting perspectives about the impacts of defence projects. There are numerous others who have contributed in preparing this report and we thank them for their uninhibited support and cooperation.

The impacted communities of Challakere and their daily struggles to secure their commons has inspired us in working with them to ensure Karnataka's treasured grassland ecosystems and the wonderful biodiversity it supports are protected for posterity.



Figure 1: *Caralluma umbellata* inflorescence at Challakere

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## PREFACE

The Honourable National Green Tribunal (Southern Zone, Chennai) per its directions dated 21<sup>st</sup> March 2013 in Application Nos. 06 and 12 of 2013 made the following observation:

“After hearing the learned counsel for the applicant and also the counsel for respondents, it is clear that the parties are in controversy regarding the factual position and also in respect of the allegations and complaints. Hence, The Tribunal feels it necessary to appoint a Committee consisting of experts to make an inspection of the lands in question as also ecological and environmental status and also the activities under taken by the proponent and to file a report thereon, which would assist the Tribunal to decide the controversy. Hence, a committee with the following experts, is constituted hereby, who will make an inspection of the land in question and also file a status report as per the Terms of Reference within a period of 6 weeks herefrom:

(1) Prof. Dr. S. Ravichandra Reddy, Retd., Professor of Ecology, Bangalore University, Bangalore.

(2) Dr. K. V. Anantharaman, Deputy Director, Sci.”C” (Retd.), Central Silk Board, Bangalore.

The remuneration for the experts is fixed at Rs.1,05,000/- (Rupees one lakh and five thousand only) each payable by the respondents 10, 11, 12, 13, 14, 16 in Application No. 6 of 2013 (SZ) and their respondent No. 18 in Application No.12 of 2013(SZ) equally and hence, each respondent is directed to deposit a sum of Rs. 30,000/- before the Tribunal within 2 weeks herefrom.

The Respondent No.2, Government of Karnataka is directed to provide accommodation and also conveyance and other required necessary facilities to the Expert Members during inspection.

It is made clear that all the parties shall extend their co-operation for the early completion of the inspection work.”

A copy of this Order is annexed at **Annexure A**.

Pursuant to this Order, Terms of Reference (TOR) were issued by the Honourable Tribunal detailing the nature of the facts that were to be gathered based on inspection of impacted areas and documentary evidence. In particular, the Honourable Tribunal directed that “(t)he Committee may go through the averments and the grounds put forth in the respective Applications, make a field study, comprehend and submit a report focussing on the issues listed below. The Committee may take the liberty of adding any relevant issue, it felt appropriate.” The Honourable Tribunal also felt it necessary to direct that the “Committee may interact with the local population/stakeholders and summarise their views along with its own observations.” A copy of the TOR is annexed at **Annexure B**.

In conformance with the aforesaid Order and TOR, this joint submission is made by Leo F. Saldanha, Applicant 6 of 2013 and Environment Support Group, Applicant 12 of 2013, to the Expert Committee constituted by the Honourable Tribunal.

At the outset, the Applicants wish to submit that they have extended all necessary support to the Expert Committee in pursuance of the aforesaid Orders. As a matter of record, it is submitted that



the Expert Committee commenced its work only after the elections to the Karnataka State Assembly were completed.

In response to the request of the Applicants, the Committee accorded a hearing to the Applicants and their associates on 18<sup>th</sup> May 2013. Further, the Applicants and their associates also assisted the Committee in visiting various impacted areas in Challakere Taluk of Chitradurga District, Karnataka on 23<sup>rd</sup> May 2013. The Applicants and their associates also assisted the Committee in holding public interactions in five locations covering the impacted populations of about 70 villages. A report of the site inspection undertaken by the Expert Committee, as also the major issues that emerged in the public interactions, as documented by the Applicants, is annexed at **Annexure C**.



*Figure 2: Public Hearing held by Expert Committee in Challakere Taluk*

## SECTION I: BACKGROUND OF THE CASE

During the years 2009-2010, at least 10,000 acres of precious, biodiversity-rich, grassland ecosystems (protected for centuries as Amrit Mahal Kavals) in Challakere Taluk of Chitradurga District were diverted by then Deputy Commissioner of Chitradurga, Mr. Amlan Aditya Biswas, IAS, for various defence, industrial, infrastructure, institutional and commercial purposes. Though these decisions may have had the approval of the Karnataka Cabinet, the entire exercise was undertaken without involving any of the local elected governments, local MLAs, and relevant departments dealing with forests, lakes, agriculture, animal husbandry, horticulture, commons lands, planning, etc.

The Applicants have contended in their Applications before the Honourable National Green Tribunal that this entire diversion is fraught with illegalities and constitutes one of the most environmentally and socially destructive governmental decisions taken in Karnataka in recent times. As a consequence of the secretive and unilateral decision-making that was engaged with in diverting the said Kavals, the true nature of the environmental and social impacts of the project has been hidden from directly and indirectly impacted communities, relevant regulatory authorities, and the public at large. An overview of the dis-aggregated land diversion for different purposes is detailed in a tabular form below:

Sl. No.	Organisation	Village Name	Sy. No.	Extent of land in acres	Purpose
1	Defence Research & Development Organisation	Varavu Kaval and Khudapura	343, 47	4000 and 290 respectively (total 4290)	Advanced Research and Development (R&D) complex, a 3.5 kilometre Runway and Test-Centre for long-endurance (48-72 hours) Unmanned Aerial Vehicles (UAVs) and Unmanned Combat Aerial Vehicles (UCAVs)
2	Indian Institute of Science	Khudapura	47	1500	Synchrotron, Energy Research Centre and Advanced Aerospace Research Centre
3	Bhabha Atomic Research Centre	Ullarti Kaval and Khudapura	1, 47	1410 and 400 respectively (total 1810)	Special Material Enrichment Facility (Uranium)
4	Indian Space Research Organisation	Ullarti Kaval and Khudapura	1, 47	473 and 100 respectively (total 573)	Spacecraft Technologies
5	Karnataka Small Scale Industries Development Corporation	Ullarti Kaval and Khudapura	1, 47	250 and 50 respectively (total 300)	Various industrial ancillary units
6	Sagitaur Ventures India Pvt. Ltd.	Khudapura	N.A.	1250	Integrated Solar Park Development along with Grid Connected 25 MW Solar PV Power Project

Sl. No.	Organisation	Village Name	Sy. No.	Extent of land in acres	Purpose
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	<b>Total</b>			<b>9273 confirmed</b>	

The Applicants submit that the submissions made by the Karnataka State Pollution Control Board in response to the aforesaid Applications before the Honourable Tribunal reveal that in addition to the projects already listed above, it is confirmed that the Indian Army wishes to access an additional 10,000 acres of land in Challakere Taluk. Moreover, submissions made before the Honourable High Court of Karnataka<sup>1</sup> reveal that the Government of Karnataka has secretively allotted many more parcels of land in the area. This includes land allotment to the Karnataka State Reserve Police (350 acres) and the Commando Training Centre (500 acres), which are in addition to lands allocated to the Karnataka Housing Board (50 acres) and Karnataka State Small Scale Industries Development Corporation (50 acres).

The Applicants submit that such massive and unprecedented allocations of ecologically and culturally sensitive landscapes, which also support a variety of livelihoods of local communities, have been made in egregious violation of the Environment (Protection) Act, 1986, the Wildlife (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the Biological Diversity Act, 2002, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, various laws and policies relating to land use and land allocations, the directions of the National Green Tribunal and the Honourable High Court of Karnataka directly applicable to this case, various judgements of the Honourable Supreme Court of India, and fundamental principles of environmental jurisprudence including the Public Trust Doctrine, the Precautionary Principle, the Polluter Pays Principle, the Principle of Intergenerational Equity, the Principle of Sustainable Development, the Principle of Prior and Informed Consent, etc.

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<sup>1</sup> All India Kisan Sabha & Ors v. State of Karnataka & ors., Writ Petition No 26144-146/2012, High Court of Karnataka at Bangalore

## SECTION II: INTRODUCTION

**Geography:** Chitradurga is a hilly district dotted with age-old forts and villages. The district is bounded by Tumkur District to the southeast and south, Chikmagalur District to the southwest, Davanagere District to the west, Bellary District to the north, and Anantapur District of Andhra Pradesh to the east. Davanagere District was formerly part of Chitradurga. The total area of the District is 8,388 square kilometres, which is divided into six taluks, namely Chitradurga, Hiriya, Hosadurga, Holalkere, Challakere and Molakalmuru. The District has 185 Gram Panchayats and 10,059 villages. Chitradurga city is the largest urban area of the district. The Population of Chitradurga District per the 2011 Census is 16,59,456, with rural population being 13,29,923 and urban 3,29,532.



Figure 3: Chitradurga District

Chitradurga is in the Krishna River Basin and is drained by the Vedavathi River across which the Vani Vilas Sagar barrage is built in Hiriya Taluk. This impounded water supports the irrigation in a few villages and drinking water demands of Chitradurga city.



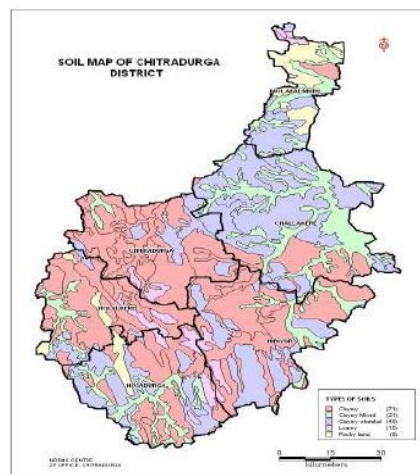


Figure 4: Chitradurga is drained by Vedavathi river, part of the Krishna Basin

**Agriculture and Soil:** According to Indian Council for Agricultural Research,<sup>2</sup> Chitradurga district is in the agro-ecological sub region of the Eastern Ghats and the Tamil Nadu Uplands and Deccan Plateau. It is a hot semi-arid eco-region. Most of the rains received in the district are during the south-western monsoons. Soil in the district is predominantly composed of black soil (62%), and the rest is red soil (38%).

The major crops grown in the district are groundnut, maize, ragi, sunflower, jowar, various grams, paddy, and a range of horticulture and plantation crops. The net sown area is 429,000 hectares, of which only 51,000 hectares is sown more than once.

Agriculture is essentially rain-fed with net irrigated area amounting to 88,000 hectares and rain-fed agricultural region constituting 341,000 hectares. The percentage composition of the total irrigated area of the district is 5.6%. There are 166 irrigation tanks in the district and 9030 borewells.



Fig

Figure 5: Soil Map of Chitradurga District

Source: Agricultural Contingency Plan for Chitradurga, 2012

**Water resources:** According to the Ground Water Information Booklet for Chitradurga district prepared by the Central Ground Water Board,<sup>3</sup> the district “receives low to moderate rainfall and is one of the drought prone districts in the state. Normal annual rainfall varies between 668mm in Holalkere in western part to 457mm in Chellakere in the northeastern part.” Irrigation tanks form a major intervention in capturing the surface water flow in the district.

On the extent of ground water use in Challakere Taluk, the Information Booklet reports that “...groundwater development in the district is quite high. In Chellakere Taluk 52% of the area falls under semi critical and 47% under over exploited category.” The report concludes by stating that:

“As per the resource assessment data, major part of the district is falling under over-exploited and critical category. The stage of groundwater development in the district is more than 100%, which requires immediate intervention by way of conservation and artificial recharge to ground water in order to arrest the declining trend in water level.”

The quality of ground water of Challakere Taluk in particular has been comprehensively analysed during August 2009 for a variety of physico-chemical characteristics by the Department of Post

<sup>2</sup> Agriculture Contingency Plan for Chitradurga Central Research Institute for Dryland Agriculture, 2012,, available at (last visited on 22/06/2013) [http://www.crida.in/cp-2012/statewiseplans/Karnataka%20\(Pdf\)/GKVK,%20Bangalore/KA27-Chitradurga%2004.10.2011.pdf](http://www.crida.in/cp-2012/statewiseplans/Karnataka%20(Pdf)/GKVK,%20Bangalore/KA27-Chitradurga%2004.10.2011.pdf) Last accessed on 24<sup>th</sup> June 2013

<sup>3</sup> Central Ground Water Board , Ministry of Water Resources, Government of India 2007, Ground Water Information Booklet Chitradurga District, Karnataka, available at [http://cgwb.gov.in/District\\_Profile/karnataka/CHITRADURGA-BROCHURE.pdf](http://cgwb.gov.in/District_Profile/karnataka/CHITRADURGA-BROCHURE.pdf) last accessed on 24<sup>th</sup> June 2013.

Graduate Studies and Research in Environmental Science, Kuvempu University.<sup>4</sup> It is reported that a fairly large proportion of the 30 samples collected from across the Taluk reveal that the water is

Sam. No.	TUR	pH	EC	TDS	TH	Ca <sup>2+</sup>	Mg <sup>2+</sup>	Cl <sup>-</sup>	Alk	F <sup>-</sup>
S1	1.1	8.1	1136	750	750	291	170	451	537	1.0
S2	0.7	7.9	1699	990	750	210	104	700	700	1.0
S3	0.10	7.3	1100	670	444	165	125	445	172	1.7
S4	36	8.1	1315	815	735	234	160	425	260	1.7
S5	41	8.3	633	421	395	165	110	330	184	0.9
S6	60	6.7	595	370	505	168	39	565	194	0.9
S7	2.1	8.7	1125	705	732	275	9.4	426	615	0.6
S8	1.3	8.4	955	606	695	206	21	163	119	0.7
S9	1.6	7.6	1469	950	712	430	25	650	700	0.7
S10	1.4	6.7	90	92	80	76	13	35	116	0.4
S11	1.8	7.2	210	121	177	131	16	37	130	0.5
S12	0.3	7.6	1047	636	594	124	63	241	110	0.4
S13	0.2	6.8	227	138	270	145	37	110	60	0.6
S14	1.3	7.3	1278	758	670	220	108	553	130	0.7
S15	10.9	8.0	1373	830	743	180	115	367	96	0.6
S16	0.6	7.3	242	147	385	103	57	346	87	0.7
S17	1.0	7.1	805	482	625	135	102	467	110	0.8
S18	0.6	8.1	2100	990	732	137	131	547	132	0.9
S19	0.10	7.1	603	362	456	122	66	183	144	1.0
S20	0.9	7.2	466	280	400	105	32	285	110	1.7
S21	2.4	6.7	486	286	460	132	92	69	168	0.9
S22	26	6.7	778	467	623	305	128	70	86	1.0
S23	1.1	7.7	923	554	644	47	110	251	68	0.8
S24	3.1	7.2	1037	622	610	127	100	206	91	0.9
S25	0.2	7.4	987.5	593	570	177	91	266	180	1.6
S26	0.2	8.4	840	520	695	139	84	177	82	1.1
S27	3.4	7.8	545	315	700	395.5	168	670	145	0.8
S28	1.6	7.9	360	260	595	83.9	63	200	79	1.5
S29	0.2	8.2	252.5	150	660	289	170	700	138	1.7
S30	0.10	7.7	324	195	370	76	23	124	44	0.9

All parameters are expressed in mg/L, except pH, turbidity (NTU) and electrical conductivity ( $\mu$ mhos/cm)

*Figure 6: Analysis of Ground water quality in Challakere*

*Source: Kuvempu University, 2012*

increasingly non-potable.

The Applicants submit that given the increasing depletion of groundwater resources, the deteriorating quality of the water for drinking and irrigation purposes, and the fact that the district does not have a perennial source of river water, the decision to site a variety of water-intensive projects at Challakere is clearly short-sighted and ill-conceived. There is a disaster waiting to happen if the region were allowed to increase its population density as it would result in accentuating the

<sup>4</sup>H. Manjunatha, S. Thirumala, H.B. Aravinda and E.T. Puttaiah, "Qualitative Analysis of Subsurface Water Quality in Challakere Taluk, Karnataka, India", The Journal of Tropical Life Science, Vol. 2, NO. 2, pp. 44 – 48, May, 2012

withdrawal of the fast depleting levels of ground water. This could possibly increase conflict between agrarian and urban communities. The fact that one of the projects proposed is a nuclear fuel enrichment facility, which is highly water-intensive, could complicate matters given the strong possibility of surface and ground water getting polluted with radioactivity.

**Contentious proposal to dam Bhadra River to meet water demands of Chitradurga:** The Rs. 6,000 crores Upper Bhadra project of the Karnataka Water Resources Department, proposed as a means to increase water security of Chitradurga and Kolar Districts by diverting 21 Thousand Million Cubic feet (TMC) of water from the Bhadra Dam in Tarikere Taluk of Chikmagalur District, has already run into rough weather as the Division Bench of the Honourable High Court of Karnataka has stayed work on this project due to alleged violations of environmental and forest laws in response to a Public Interest Litigation.<sup>5</sup> The High Court in so directing has poignantly observed that the “project should focus on the drinking water needs of the people of the State who need drinking water immediately.” In addition, the Court has questioned “why do you take up irrigation projects when people need drinking water in dry areas?”<sup>6</sup> This clearly indicates that the Honourable Court is highly dissatisfied with the arguments submitted by the State of Karnataka in promoting the Upper Bhadra Project and its support of water-intensive commercial, infrastructure, defence and industrial projects in Chitradurga, when drinking water needs are yet to be met.

**Water a critical limiting factor:** Given that Chitradurga district is without a major river providing a perennial source of water, and that groundwater levels have depleted even without major industrialisation or urbanisation thus far, water remains a critical limiting environmental factor defining the future of mega industrial, nuclear, defence, infrastructure and technology projects that are proposed in Challakere taluk. Besides ground water, irrigation tanks remain the most important sources of water. Given that the Amrit Mahal Kavals form major watersheds of such tanks and also for ground water recharge, any further diversion of the Amrit Mahal Kavals for such mega projects portends a bleak future as this will undoubtedly result in increasing water demands that are unlikely to be met without conflict.

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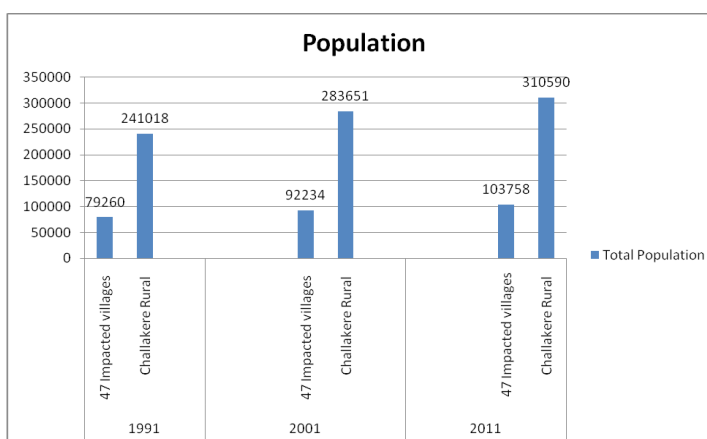
<sup>5</sup> H .S. Neelakantappa v. State Of Karnataka & Others, WP 47599/2011 , High Court of Karnataka at Bangalore

<sup>6</sup> “High Court orders stay on Upper Bhadra project”, New Indian Express, dated 21<sup>st</sup> February 2013

### SECTION III: AN OVERVIEW OF DEMOGRAPHIC DETAILS OF CHITRADURGA

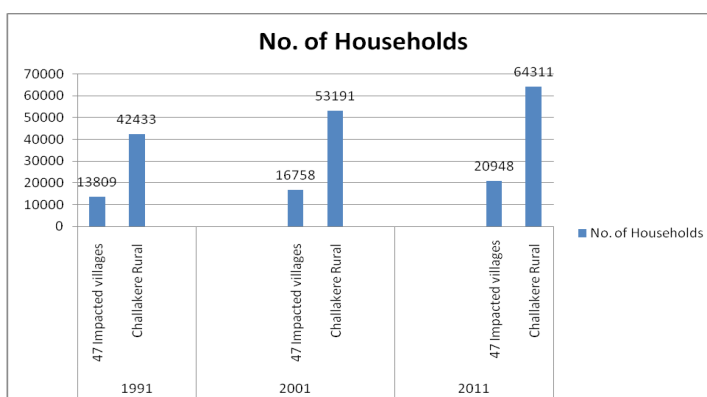
In providing an assessment of the likely social and economic displacement caused by the proposed projects in Amrit Mahal Kaval grasslands of Challakere Taluk of Chitradurga district, the Applicants compared population data gathered from the 1991, 2001 and 2011 General Census. The data is analysed for 47 of the 70 odd villages that are most likely to be directly impacted by the proposed projects in Challakere and compared with that for Challakere Taluk (Rural area) consisting of approximately 180 villages to provide a reference with villages that do not directly benefit from the grasslands.

**Population:** The analysis of three decades of Census data - 1991, 2001 and 2011 - reveals that the population in the impacted villages has increased at a slower rate over the past decade (2001 - 11) when compared with the population growth rate over the previous decade (1991 - 2001). The decadal increase in population in the impacted villages is 16.36% between 1991 and 2001 and 12.5% between 2001 and 2011. The population of the 0 to 6 age-group is steadily declining on comparing the available data for 1991, 2001 and 2011 (5.1% decrease between 1991-2001 and 11.6% decrease between 2001-2011). This again indicates the declining population growth rate for the region, and suggests that the population is perhaps ageing. The trends seem to be similar for the entire Challakere rural population.



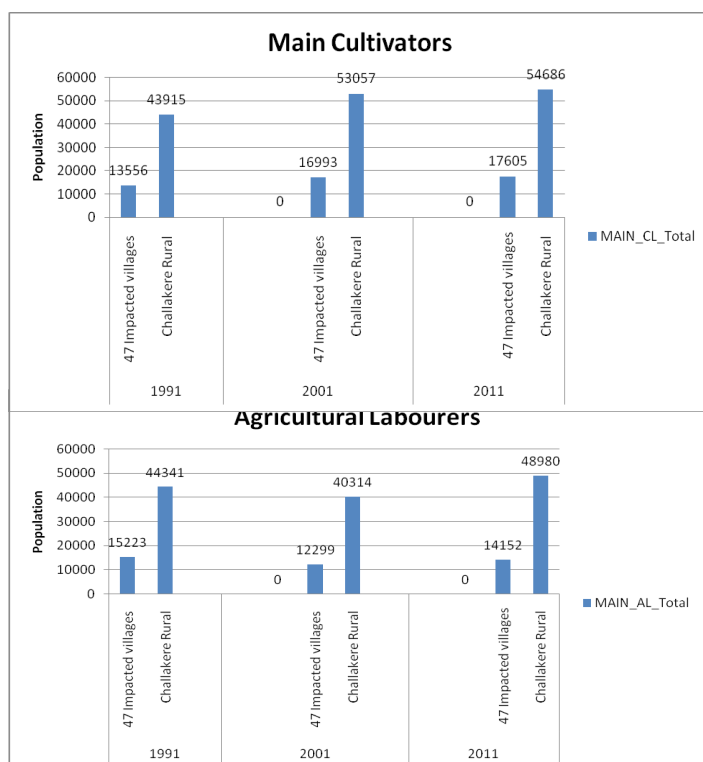
**Households and household-based industries:** There seems to be a substantial increase in the number of Households in the impacted villages during the decades of 1991 – 2001 (21.3%) and 2001 – 2011 (25%). When this is compared with the number for Household based Industries, the figures reveal that in the decade of 1991-2001 there was a 40% increase in this economic activity and the trend reversed sharply in the following decade with a 19% decrease during 2001-11.

For Challakere Rural as a whole, the rate of increase of Households during the decades of 1991-2001 and 2001-11 were 25% and 21% respectively. The data for Challakere Rural Household based Industries demonstrates a very strong negative trend during 2001-11 (-35.7%) when compared with the previous decade of 1991-2001 (38.3%).



In terms of pure numbers of Household based Industries over the past decade, the impacted villages seem to have fared relatively better than other villages in the Taluk given the high overall decline.





### Cultivating families and Agricultural labour:

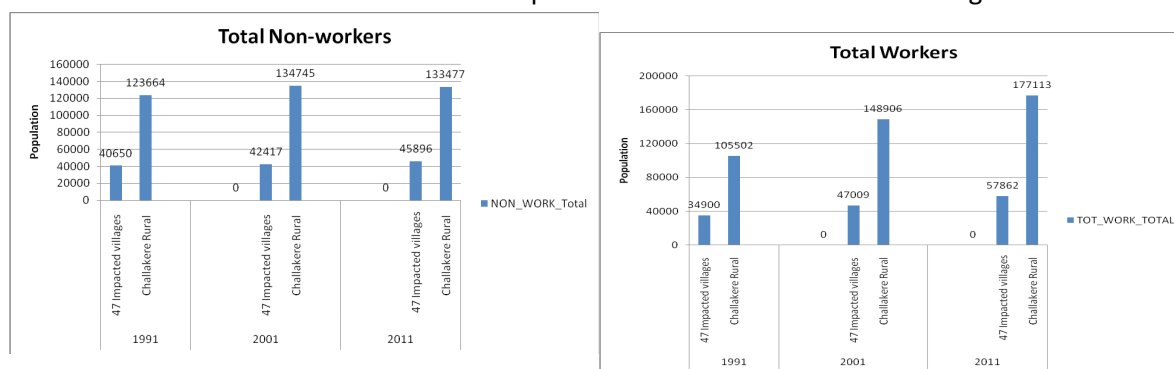
The Census data for 2001 – 11 reveals that the decadal growth rate of Main Cultivators in the impacted villages has declined significantly. The trend is similar for Challakere Rural.

As for the number of Main Agricultural Labourers, there was a 19% decrease in the impacted villages during the decade of 1991-2001 which trend reversed in the subsequent decade (2001-11) with a 15% increase. Similar trends were observed overall for the Challakere Rural villages.

### Total workers and Non-workers:

The decade of 1991-2001 witnessed a sharper rate of increase in work force (34%) as compared with the subsequent decade (23%). For Challakere Rural as a whole, the trends were similar with a 41% increase in 1991-2001 and 18% during 2001-11.

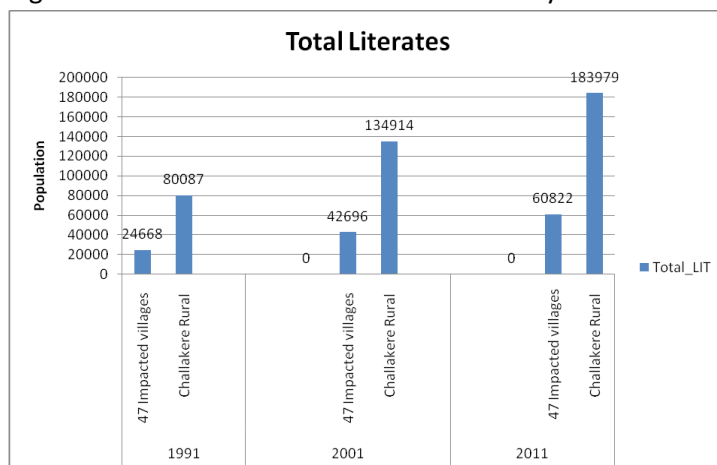
The impacted villages have witnessed an increase in the growth rate of Non-workers during 2001-11 decade (8%) as compared with 4% during the previous decade. In contrast, Challakere Rural demonstrates a healthy trend and reveals a marginal decrease in the decadal growth rate for Non-workers which is -1% for 2001-11 as compared with an 8.9% increase during 1991-2001. The



causative factor for the impacted villages suffering a significant increase in unemployment is unclear, but it is probable that it could be due to erosion of livelihoods associated with the Amrit Mahal Kavals after their diversion in 2009-10.

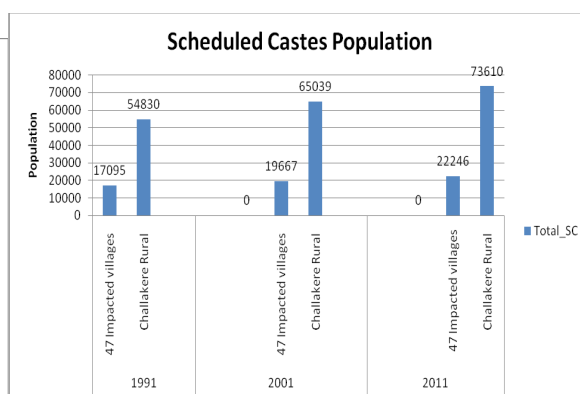
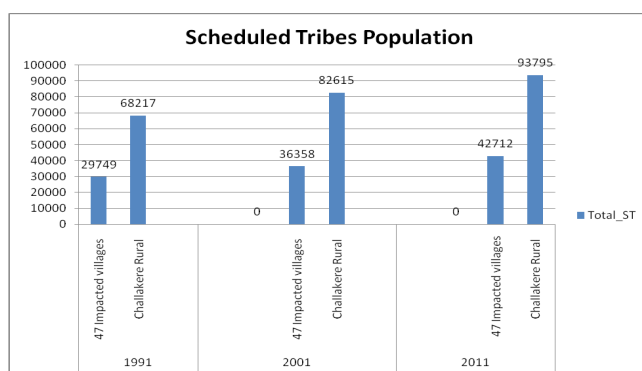
**Literacy:** The Census data reveals that the rate of increase in Literacy levels for the impacted villages has witnessed a sharp decline during the decade of 2001-11. The 42% increase in Literacy levels for the impacted villages in 2001-2011 is in sharp contrast with the robust 73% increase in Literacy levels

observed in the previous decade. The trend is similar for Challakere Rural. This reveals that there is a significant shortfall of educational and literacy extension services in the affected areas at present.



**Scheduled Caste and Scheduled Tribes:** The decadal growth rate in Scheduled Caste and Scheduled Tribe populations in impacted villages has marginally decreased during 2001-11 (SC: 13.1%, ST: 17.2%) when compared with the previous decade (SC: 15%, ST: 22.2%). The trend is similar for Challakere Rural. When the combined Scheduled Caste and Scheduled Tribe populations are compared with the total population in the impacted villages it reveals

that there has been a steady increase in the proportion of SC-ST population within the total population (1991: 59.1%, 2001: 60.74%, 2011: 62.6%). The trend for Challakere Rural is also similar (1991: 51.05%, 2001: 52.05%, 2011: 53.8%).



The analysis of these key parameters based on data gathered in the Census during 1991, 2001 and 2011 reveals the following:

1. The overall rate of population growth in the impacted villages and Challakere Rural seems to be stabilizing. This trend is also evident in the decreased growth rate of the 0-6 age group of the population over the past decade. This could mean that the population is ageing and if this trend were to continue the proportion of elders in the general population will be significantly higher in the coming decades. The data suggests that the impacted population appears to be less resilient to adapt to drastic changes in economic support systems such as those caused by displacement and dislocation. The trends indicate that in the coming decades the proportion of youth to the general population will decrease, given that the size of the 0-6 age group in the population is declining in this decade. This portends that the proportion of wage-earners would decrease in the coming decades in family units and this could stress the economic self-sufficiency of the

family. An ageing population in rural communities coupled with the displacement of traditional livelihoods puts the elderly population at significant risk of failing to cope with impending changes. This possibility is particularly high as their capacity to develop new skills to adapt to urban and industrial landscapes is unlikely, leaving them to earn their livelihoods from low skill jobs that would also be low paying. The overall economic distress of such communities is more than likely to be significantly accentuated were the communities to be economically disturbed or even displaced.

2. The decade of 2001-11 has witnessed a significant decrease in the number of Household based Industries in the impacted villages, and also for villages in Challakere Rural, when compared with the previous decade. The decline in the number of Household based Industries correlates positively with a reduced growth rate of workers and an increased growth rate of non-workers in the impacted villages. This indicates that the economic independence of families has on the whole declined in the past decade. When considered along with the fact that the growth rate of Main Cultivators declined tremendously during 2001-11, and when compared to the previous decade, the data reveals that economic distress in the impacted villages seems to be increasing. This is also confirmed by the fact that the decade of 2001-11 has witnessed a sharp increase in the supply of Main Agricultural Labourers, which is normally a sign of distress in agrarian and pastoral communities.
3. The Literacy rate in the impacted villages has demonstrated a negative trend over the past decade when compared with the previous decade (1991-2001). This is a strong negative indicator of the fact that educational and literacy extension services of the State do not seem to be making a positive impact on the population.

Based on this analysis the Applicants submit that the communities in villages impacted by the proposed projects are already experiencing economic distress even though they (and their ways of life) have not yet been seriously displaced, disturbed or dislocated. There is extensive literature to prove that direct displacement and dislocation of livelihoods results in a comprehensive negative impact on the economic, social and cultural conditions of the affected families. For example, academic scholarship drawing on field work over a period of three years from over 80 villages in 20 districts scattered in six dry tropical states of India has unambiguously concluded that “unless the bio-physical constraints in the dry areas are substantially reduced, the deliberate marginalisation of CPRs [Common Property Resources] would mean reduced range of locally managed and used options for the people to withstand the environmental stresses. This is more so for the rural poor who continue to significantly depend on the CPRs for their sustenance....the ecological imperatives (supporting CPRs) and sustenance of rural poor are quite important factors, which may not be ignored unless substitute options to CPRs that meet these two concerns are evolved.”<sup>7</sup>

Due to the diversion of the Amrit Mahal Kaval grasslands in Challakere, the loss of access to the grazing commons will result in a serious dislocation of livelihoods, particularly those dependent on pastoralism. This will further accentuate the economic depression that the communities are

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<sup>7</sup> NS Jodha, “Common Property Resources and the Environmental Context: Role of Biophysical versus Social Stresses”, *Economic and Political Weekly*, Vol. 30, No. 51 (Dec 23, 1995), pp. 3278-3283

currently suffering from. Such a situation is worrying as displacement of such livelihoods is not considered as a project induced impact and has thus not been compensated. In addition, were the proposed projects to result in acquisition of private landholdings due to expansion of proposed investments and also new industrial initiatives, the social and economic impact would be far worse on affected communities.



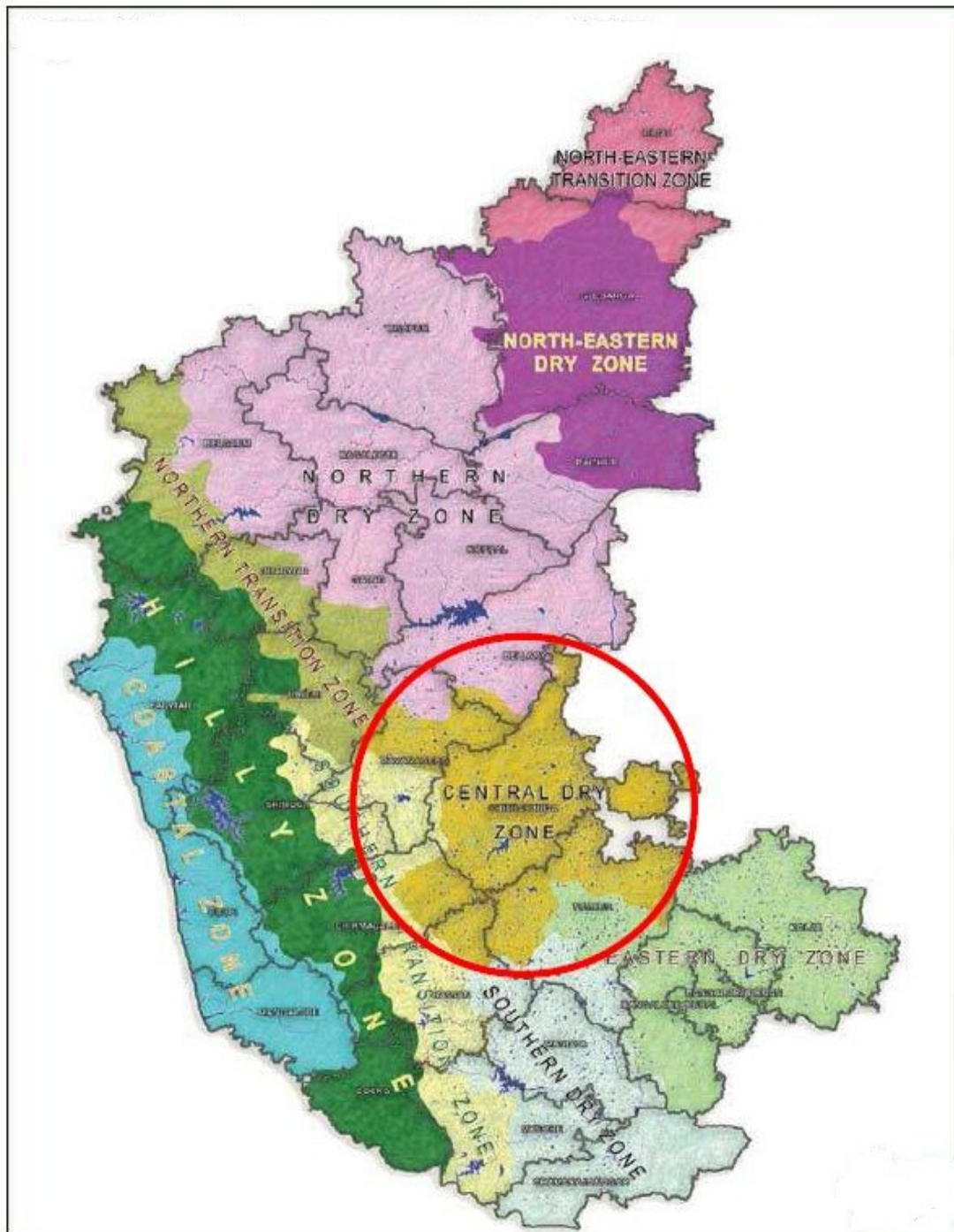


Figure 7: Agroclimatic zones of Karnataka

## SECTION IV: AMRIT MAHAL KAVALS - BIODIVERSITY-RICH, HERITAGE COMMONS

Various mega defence, industrial, research and infrastructure projects proposed in Challakere Taluk are to be sited in common grazing pastures and grasslands ecosystems which are legally protected as Amrit Mahal Kavals, originally set aside for grazing the special breed of Amrit Mahal cattle. This cattle breed was accorded such an important place as they formed a fundamental support system of armies that roamed across these landscapes for centuries. Along with other indigenous breeds, the Amrit Mahal cattle (with their high degree of tolerance to drought) has since been employed in supporting agriculture in rather harsh semi-arid conditions.

The Kaval lands were extraordinarily well-protected grassland ecosystems which was achieved through the appointment of a Kavalgara (Kaval protector) who ensured that the Amrit Mahal breeds got the first right of grazing in the post-monsoon period. Only then were the pastures opened for grazing by other cattle breeds, goat and sheep owned by local communities. This tradition continued in the post-independence period as well.

Karnataka State was home to nearly 4,00,000 acres of Amrit Mahal Kavals at the time of independence. Now the state is left with only 60,000 acres. Of this remaining Kaval area, a substantial portion has been encroached or in various states of degradation. The State has directly been the agency for such massive loss of grassland ecosystems, that the Kavals are, for at various points of time it has released these ranges for various industrial and infrastructural projects, in addition to advancing social justice in rehabilitating landless labourers.

In 1971, about 12,000 acres of Amrit Mahal Kavals in the Challakere Taluk of Chitradurga district were transferred to the custody of the Karnataka Sheep and Wool Development Corporation, Department of Animal Husbandry. The conditions for this transfer in custody were specifically that the land would only be used for advancement of sheep rearing and related pastoral demands and that this protected status of the Kavals would remain undisturbed.



**Kavals support a range of Ecological and Livelihood services:** The Applicants, in their Applications before the Honourable National Green Tribunal, have provided extensive evidence of the nature of local pastoral and agrarian communities' dependence on the Amrit Mahal Kavals of Challakere Taluk. At the risk of repetition, however, the Applicants submit to the Expert Committee a broad overview of the relationships between these local communities and the Kaval grasslands to highlight how thousands of families sustain their livelihoods because of the Kavals and

without disturbing the fine ecological balance of the ecosystem. In fact, such interdependence has strengthened the resiliency of the extant ecosystem services that the Kavals render.

The Amrit Mahal Kavals, since time immemorial, have provided a variety of ecological and livelihoods services to the local communities of this region. Not only do they serve as a grazing ground for cattle, but they also provide material for various local handicrafts, minor forest produce and medicinal plants. The Kavals are also an integral part of the local culture of the communities and are the backdrop in which a variety of festivals celebrating peoples' animistic beliefs are held. Such is the interconnectedness of the communities to the Kavals that the best evidence of this relationship is in a variety of folk songs expressing gratitude to Mother Nature for extending a range of ecological and livelihood support services to the people.



Figure 8: Different stages of weaving of the Challakere Kampli

Chitradurga district, in particular, is known for a very high density of pastoral communities and their intense dependence on livelihoods connected with livestock maintenance. As per the Agriculture Contingency Plan,<sup>8</sup> the district accounts for 316,000 non-descriptive cattle, 24,000 cross-bred cattle, 193,000 non-descriptive buffaloes, 368,000 goats and 931,000 sheep. Shepherding communities such as the Kurubas and Gollas, as also Lambani, Akki Pikki and Nayaka tribes, from about 70 villages, depend on the Challakere Kavals for their livelihoods. The Kuruba community, for instance, weave the wool from sheep into blankets which are nationally famed as the "Challakere Kamblis". Local villagers collect certain grasses and reeds to weave a variety of products that help farms and earn an additional income.

The traditionally nomadic Lambani Communities depend on the Kavals for a wide range of raw materials to support one of their major economic products - weaving baskets from palm fronds. The Lambanis also possess extensive knowledge of medicinal plants for ethno-veterinary uses which has been recently documented and analysed by researchers in a paper entitled "*Ethnoveterinary uses of medicinal plants among the Lambani community in Chitradurga district, Karnataka, India*" and published in the Asia Pacific Journal of Tropical Biomedicine.<sup>9</sup>



According to this study, "Lambani tribe, who are generally poor and live in remote areas, use ethno veterinary medicine for the primary healthcare of their animals. The use of plants

<sup>8</sup> *Supra* note 2

reveals their interest in ethnomedicine and further research on these species could lead to the discovery of novel bioactive molecules for efficient management of diseases.” The study discovered that 39 plants from 24 families having 26 different ethno-veterinary uses were used by the tribe, and that “these records indicate the ethno-veterinary wealth of Lambani community in Karnataka”.

The local communities also rear several native varieties of cattle such as Hallikar and Red Sindhi, which have over time also been cross-bred with Amrit Mahal. There also are several families who have traditionally bred the Amrit Mahal breed and continue to protect their purity. The high place these native breeds have in peoples' lives is evident in the fact that they are revered by communities as “Devara Dhana” (God’s cattle). The male calves of these rare indigenous breeds are often gifted to various temples located within the Kavals, and even allowed free range without any interruption. The practice of such social customs extend protection to the survival and also genetic purity of these indigenous cattle breeds.

It is clearly evident from these facts that Amrit Mahal Kavals, as common grazing pastures and grassland ecosystems, form a critical support system and habitat for the sustenance of livelihoods of numerous agrarian and pastoral communities and also as major sites of biodiversity. Communities are extremely conscious of the carrying capacity of the Kavals, and have developed a highly complex form of utilising its many ecological services. For instance, there is active discouragement against overgrazing the pastures, including by roaming across the expanse in turns. The Kavalgara is a highly respected person, and though the State may have disbanded such services, the respect local communities accord to this position ensures that his/her insight into retaining the delicate ecological balance is practised.

Though there are stray examples of poaching of wildlife in the area, communities, by and large, have ensured that the populations of Blackbucks, found in large numbers in the Challakere Kavals, are not disturbed. This is also evident from the various sites of animistic belief where nature is revered and worshipped, and which serve as reminders to the communities of the need to protect and conserve the Kavals to sustain its rich biodiversity and in turn their livelihoods. It is because of such social and cultural practices, and the deep tradition of conservation of the Kavals, that the Challakere Amrit Mahal Kavals have remained rather undisturbed by encroachment or degradation, when compared with Kavals elsewhere in the State.

The fact that Amrit Mahal cattle breed are resilient and drought tolerant provides a critical advantage to farming and pastoral communities in adapting to the prolonged periods of drought. Studies suggest that the Deccan Plateau region, in particular, is likely to suffer from increasing frequency and severity of droughts due to impacts of climate change. With this in mind, the conservation of Amrit Mahal breed and the Kavals that support them, assumes critical importance.

**History of conservation of Amrit Mahal Cattle and Amrit Mahal Kavals:** The Applicants wish to submit that there is historical evidence of conservation and protection of the Amrit Mahal Kavals from the times of the Vijayanagar Empire, the subsequent rule of the Rajas of Mysore, through the periods when Hyder Ali and Tipu Sultan ruled much of south India, and also during the colonial

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<sup>9</sup> Ramachandra Naik M., Vaishnavi Venugopalan, Preethi Kumaravelayutham and Y.L. Krishnamurthy, “*Ethnoveterinary uses of medicinal plants among the Lambani community in Chitradurga district, Karnataka, India*”, Asian Pacific Journal of Tropical Medicine, 28 August 2012.



period. This is most lucidly analysed in a “*Note on the Cattle of Mysore*” prepared by A. Kristnasamiengar and Captains H. T. Pease,<sup>10</sup> which reports as follows:

“Karuhatti’ establishment of the Vijayanagar Viceroy (some time between 1572 and 1600) at Seringapatam consisted of *Hallikar* cows imported from Vijayanagar. This may be said to have been the nucleus of the *Amrut Mahal* cattle. The Seringapatnam cattle passed into the hands of Wadayars of Mysore, some of whom, notably Chamaraja Wadayar (1617-1636), Kantirava Narasaraj Wadayar (1638-1658), and the celebrated Chika Devaraj Wadaya (1672-1704), made their own additions to them from time to time, assigning “*kavals*” in different parts of the Kingdom. It was in Chikka Devaraj Wadayar’s time that the cattle establishment obtained recognition as one of the departments of the Administration. It was called “*Benne chavadi*” or establishment of cows both as a breeding stud and to furnish milk and butter for the Palace.... The accumulated herds of the Rajas of Mysore passed on to Hyder Ali when he usurped the throne. In extending his conquest and in reducing the numerous rulers who had held sway over more or less extensive tracts in Mysore, he acquired also the herds of superior cattle belonging to them. Among these may be mentioned the Pallegars of Chitaldroog, Tairkere and the Raja of Nagar. Hyder seems to have made extensive use of the cattle which he had appropriated in the movements of his army equipage, and is popularly credited with having kept at least 60,000 bullocks in different parts of the Province.... Upon succeeding to the throne of his father, Tippu added to these herds those of the Pallegar of Hagalvadi, Chikka Devaraja Wadayar’s suggestive name of “*Benne chavadi*” was changed in his time into a more pompous one of *Amrut Mahal*... Tippu took great interest and issued a “*Hukumnama*”, or regulations for the Department... The Dairy Department. Seems to have been on a large scale and amildars were expected to train the young steers which were allowed to graze in the raiyats’ fields... There was an annual muster of the herds, and Tippu frequently attended it in person and distributed awards.”

So high was the attention accorded to the protection of this breed that the British came to acknowledge its “excellence.. when it enabled Hyder Ali to march 100 miles in two days and a half to the relief of Chellumbrum, and after every defeat, to draw off his guns in the face of his enemies; and when Tippu Sultan was enabled to cross the Peninsula in one month for the recovery of Bednore and to march 63 miles in two days before General Meadows.” Clearly, therefore, it would not be an exaggeration to state that the valiant efforts of Hyder Ali and Tippu Sultan in staving off the multiple attacks by the British Empire, led then by the East India Company in its rapacious exploitation of natural resources of India, was achieved on the backs of this hardy Amrit Mahal cattle breed.



<sup>10</sup> A. Kristnasamiengar and Captains H. T. Pease, “*Note on The Cattle of Mysore*”, (Superintendent Government Printing, Calcutta) (1895)

It appears that with the fall of Tippu Sultan, there was a collapse in the discipline which had accorded protection to this rare breed and the Kavals that supported them. The British were worried that if “cattle were (being) allowed to degenerate to such a degree (then) ... it became necessary to resume charge of it in order to preserve the breed from extinction.” Wary of such disastrous consequences, in “1813 the *Amrut Mahal* cattle, together with the pasture lands, were handed over to Captain Harvey of the Madras Commissariat. The herds then rapidly improved and doubled in number in the course of but ten years.”

This Note also provides evidence of the rigorous discipline that was employed in maintaining the vigour and purity of the Amrit Mahal cattle. This involved a careful management of the cattle for which the free range of the Kavals was fundamental. In fact the Note states that “the cattle of these herds are kept in a semi-wild state. They are kept in the open, and all the protection of shelter they are afforded is that of tree, from the midday sun and rain. They roam about in unrestrained freedom in their vast “*kavals*” to the great benefit of their health and limb.” Such cultural traditions accorded such a high degree of care and protection to the Amrit Mahal breed that the Commissioner of Mysore is said to have remarked in 1818, according to the Note, as follows:

“They are active, fiery, and walk faster than the troops; in a word, they seem to constitute a distinct species, and to possess the same superiority over other bullocks in every valuable quality that Arabs do over other horses.”

The Note also shares another remark by one Professor Wallace in 1889:

“The breed as a whole occupies amongst cattle a position for form, temper and endurance strongly analogous to that of the thoroughbred horse amongst horses.”

On the nature of the Kaval landscapes that protected and propagated such a hardy breed of cattle, the Note discusses as follows:

“The cattle are kept in their grazing grounds, called “*kavals*”, about 210 in number, distributed over the greater portion of the Western and Central Mysore, and covering an immense extent of the country. They comprise varieties of soils often undulating and covered with scrub jungle growth.”

From this Note it is evident that a combination of cultural traditions, State support and community-led conservation of grassland landscapes served in developing one of the finest breeds of cattle. With the passage of time, and the dwindling utility of Amrit Mahal cattle in warfare, and also their acute neglect in the post-colonial period, the population of this rare cattle breed dwindled so fast that only a few thousands survive across Karnataka and this ancient breed is on the verge of extinction. It appears that the only sure way to conserve this rare heritage of Karnataka for posterity, especially given its innate nature to retain its vitality by open grazing, is to protect the largest contiguous expanse of grassland now left in the Challakere Amrit Mahal Kavals.

**Woeful neglect of Amrit Mahal Kavals in the post-independent period:** The state of neglect of Amrit Mahal Kavals in Karnataka in the post-independent period is evident from a note prepared by the

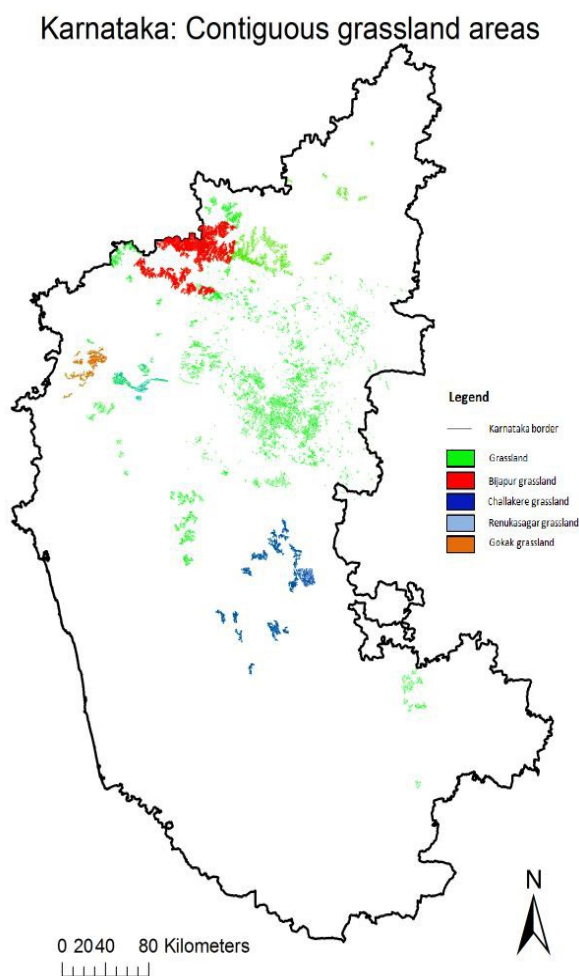
Deputy Director of the Amrit Mahal Species Breeding Centre, Ajjampura, dated 2<sup>nd</sup> February 2003. The official shares with deep concern in this note that while at the time of independence 240 Kavals existed in various districts of Karnataka, and the total area spread over 4,13,519 acres, only 63 Kavals are left in 6 districts today, spread over an area of 68,440 acres. He reports that that a major proportion of such Kaval grasslands were diverted by the Government for industrial and urban projects in addition to the expansion of agriculture. Of the remaining area, about 9,394 acres has been encroached and about 21,976 acres have been allotted to various institutions. A detailed verification of Record of Rights (RTC) by the Deputy Director revealed that only 37,069 acres of open and unassigned Kavals exist in Karnataka. The illegal diversion of Challakere Amrit Mahal Kavals must be perused in this context.

## SECTION V: CHALLAKERE GRASSLANDS - HOME TO HIGHLY THREATENED AND CRITICALLY ENDANGERED SPECIES

The Challakere Amrit Mahal Kavals is one of the last remaining large and contiguous expanses of semi arid grasslands left undisturbed anywhere in the State of Karnataka. To illustrate this fact, the Applicants produce at **Annexure D** a Report prepared by researchers of Ashoka Trust for Research in Ecology and Environment (ATREE) on the request of the Applicants. It is evident from this report that there is very little possibility of protecting the last remaining stretches of such edaphic ecosystems unless they are left undisturbed.

The concern over degradation of grassland ecosystems which form a critical habitat for a variety of highly threatened and critically endangered species of flora and fauna was voiced over three decades ago by Karnataka's leading forester S. G. Neginhal in a paper on "*Status and Distribution of Wildlife in Karnataka*."<sup>11</sup> The following excerpt from the paper is relevant to this discussion:

The grass and scrub biotope is found in the eastern belt of the State viz, eastern sides of Belgaum and Dharwar Districts and the whole of Bellary, Gulbarga, Bijapur, Chitradurga, Tumkur, and Kolar Districts. In these parts of the State arid conditions prevail and extensive grasslands studded with scrub growth are found scattered. Nature has evolved quite interesting flora and fauna to suit these conditions. The flora is typical and consists of *Acacias*, *Limonia Sp*, *Euphorbia Sps*, *Carissa Sp*, *Ixora* *Cassia auriculata*, *Dodoneo viscosa*, etc. This rare flora of the Deccan Plateau is fast disappearing and becoming extinct, at least locally, due to land hunger and heavy incidence of grazing by sheep and cattle.....This biotope sustains the true Indian fauna such as the blackbuck.



<sup>11</sup>S.G. Neginhal "*Status of Distribution of Wildlife in Karnataka*", My Forest, 1981



The concern over the rapidity with which the grassland ecosystems are being devastated is evident from the following excerpt in Neginhal's paper:

The Nawab of Savanur and the Chief of Mudhol had kept the Hunting Cheetahs when the Dharwar plains abounded with the Blackbuck a little prior to 1884 A.D. Blackbuck and the Indian Gazelle (the Chinkara) were fairly common through the western talukas of the Bellary District in 1904 (Francis) and in the vicinity of Hosadurg and near Chitradurg (Russel, 1900). The present day most endangered birds viz., the Great Indian Bustard and the Lesser Florican were found scattered in Dharwar, Belgaum, Bijapur, Bellary, Chitradurga Districts. (Gazetteers of Dharwar, Belgaum, Bijapur of 1884, Bellary 1904 and Russel 1900).

On account of persecution and human encroachment on their habitats the Blackbuck, the Chinkara, the Great Indian Bustard and the Lesser Florican soon lost their grounds and were wiped out from most of their former haunting grounds.

More than a decade later, when Mr. Neginhal evaluated the state of neglect of these grassland ecosystems, for instance in the Rannibennur Blackbuck Sanctuary, he observed that:

...in a single morning drive in 1974, I counted 15 Bustards. In addition to the common sighting, the Bustards were even observed laying eggs. This was most encouraging as the great India Bustard was the most endangered species standing on the brink of extinction and was enlisted in the Red Data Book. So when I located and photographed an egg of this bird in May 1976 at the sanctuary, it became a record... the population observed in 70s is dwindling year by year. Last year (in 1996) I could locate hardly any Bustard!

His enquiry into the "reasons for this deplorable situation" led him to realise that it was:

(L)arge scale Eucalyptus hybrid plantations raised at the sanctuary over the years (that) had created this ecological disaster for the Great Indian Bustard, the blackbuck and their associates. As a result of massive tree planting, the typical open grassy habitats required for the bustards and the blackbuck disappeared. With the bustard, other rare birds like the common Sand grouse (*Pterocles exustus*), the Indian courser (*Cursorius Coromandelicus*) and many rare open country prey birds had also followed suit. Likewise the other open country animals like the blackbuck, the wolf, the fox, etc. started dwindling in their populations. Thus, the whole scenario was standing on the brink of ecological disaster in the 90s.

Clearly, the high degree of sensitivity with which grassland ecosystems have to be protected and managed is evident from the fragility of the populations of the flora and fauna that are supported by such grassland ecosystems. Interestingly, the enormous biodiversity value of the Challakere grasslands and their ecological sensitivity has also been recorded in a Rapid Biodiversity Survey of Khudapura Campus in Challakere by Centre for Ecological Sciences, Indian Institute of Science,<sup>12</sup> one

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<sup>12</sup>"A Precious Heritage, Rapid Biodiversity Survey of the Khudapura Campus, Indian Institute of Science", 25-28 June 2011, Centre for Ecological Sciences, Indian Institute of Science, Bangalore

of the Respondents to the pending Applications before the National Green Tribunal. Even from their preliminary analysis, the researchers indicate that the habitat supports “high densities of Blackbuck”. The report in fact concludes by emphatically making a case against diversion of these grassland ecosystems for any other purpose:

Even a short, preliminary, incomplete biodiversity survey of the new campus revealed it to be extraordinarily rich in vertebrate and plant species. From the spectacular and highly endangered blackbuck to small mammals such as foxes and hares, from the rich diversity of raptors (birds of prey) to the tiny minivets and sunbirds and the large number of native plant species, all these point to a rich, relatively undisturbed natural ecosystem. **There is much that can be learned from studying species of plants and animals that have evolved to thrive in arid landscapes and, in a world where fresh water is becoming an increasingly rare resource, preserving these species and studying their special adaptations to arid environments should surely be a high priority.**

Many of the plant and animal species found here are specialists of arid scrub and grassland – ecosystems that have essentially vanished from the Indian subcontinent, or if present, are mostly highly degraded and taken over by exotic, invasive species. The rich diversity of native scrub specialists revealed by this survey, together with the highly endangered status of the blackbuck, found in large numbers on our campus, places upon us a special responsibility to ensure the continued survival of these original inhabitants of our campus. (Emphasis supplied.)

The report of the Centre for Ecological Sciences is part of the formal application filed by the Applicants before the Honourable Tribunal. It is clear from this report that diverting such fragile ecosystems to any other purpose would be disastrous as it would further threaten critically endangered species. Yet, at the very first instance when the Institute has had an opportunity to defend its own biodiversity assessment of the Challakere Kavals, it has instead deposited in its Statement of Objection filed in response to the Applications that:



“The allegation that the grass lands are potential habitats for critically endangered birds including Indian bustard(,) lesser florican is not admitted to be true and correct.”

“The allegation that these birds are often found associated in the same habitats as blackbuck is a meaningless statement.”

“The allegation that the Amrit Mahal Kavals of Challakere Taluk of Chitradurga district constitute a critical component of the last few remaining flagship faunal species of grassland ecosystems in India is false.”<sup>13</sup>

This when in the same Statement of Objections it has been stated by the Institute that:

“intends to develop the new campus on the said lands without obliterating the dignity or the original character of the landscape and its current inhabitants and therefore a rapid biodiversity survey was conducted by its students in the land allotted to it. In fact precious unnoticed biodiversity has been noticed only with the efforts of this respondent and this clearly highlights the role of the respondent in preserving such biodiversity. In fact, this respondent which is been in existence for more than 100 years, would not act irresponsible in the matter of environment or biodiversity.”<sup>14</sup>

The Indian Institute of Science proposes to build a Synchrotron, amongst other things, which is a high impact project by any stretch of imagination as it involves the building of massive structures spread over 200-300 acres of the grasslands. This will result in comprehensive modification of the ecosystem. The irreversible and adverse nature of such developments on grasslands seems to be lost on an Institute of such repute which also claims in its Statement that it has “planted 8000 trees in the lands which have been allotted” and that it “further plans to plant more number of trees on the said lands,” presenting such efforts as though they were ecologically benign. The Applicants submit that there is no greater and surer way to destroy the fragile balance of natural grasslands ecosystems than to plant it so intensively and extensively with trees, as is evident from the findings of Neginhal, cited earlier. The expedient position adopted by the Institute in defending its illegal developments at Challakere is also evident in its rather specious claim in its affidavit before the Honourable Tribunal, that “precious unnoticed biodiversity has been noticed only with the efforts” of its researchers. Such statements betray an utter lack of understanding and concern of a premier scientific establishment of India of the enormous ecological devastation and destruction of local livelihoods and traditional knowledge its ill-thought projects are likely to cause.

#### **Challakere Kavals as habitats of Great Indian Bustard, and the search for the elusive Lesser Florican:**

The Applicants have requested various leading researchers in compiling critical information relating to the biodiversity of the Challakere grasslands, in particular, and of the region in general. These researchers have

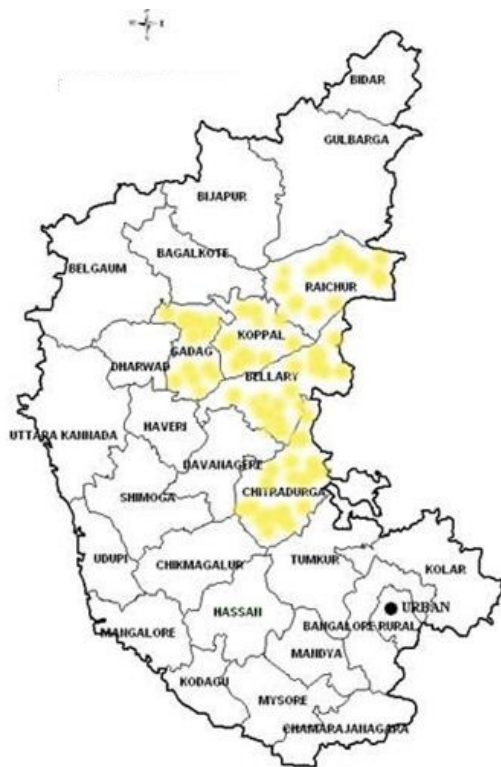
<sup>13</sup> As submitted at Paras 17, 18 and 19 in Statement of Objections of Ir No. 6/2012 filed by Leo F. Saldanha before the Honourable National Gre

<sup>14</sup> As submitted at Paras 11 in Statement of Objections of Indian Institu filed by Leo F. Saldanha before the Honourable National Green Tribunal.



On the request of the Applicants, Santosh Martin, Honorary Wildlife Warden of Karnataka (Bellary) and Samad Kottor, Ex-Honorary Wildlife Warden of Karnataka (Bellary) produced a factual report of the distribution of the Great Indian Bustard in Karnataka entitled “*Great Indian Bustard in Karnataka*” and a copy is annexed at **Annexure E**. It is reported by them that:

On the distribution of Bustards in other parts of Karnataka and Andhra Pradesh, the researchers report:



It is clear from this note that the Challakere Amrit Mahal Kavals are undeniably the most appropriate habitat to be conserved if the Great Indian Bustard is to have any chance of survival in this region, especially considering the fact that these Kavals constitute the last remaining large and contiguous

*Figure 9: Current range of Great Indian Bustard  
in Karnataka*

grassland ecosystem left undisturbed anywhere in Karnataka. Such concerted conservation action on the part of the State would be a major and progressive initiative to protect a species from impending extinction from this planet. This would also constitute an action that would respect and comply with the recommendations of National Wildlife Action Plan, various directions of the Honourable Supreme Court, and guidelines, policy proposals and reports of the Planning Commission of India and the Union Ministry of Environment and Forests.

Martin and Kottor have also produced another note on the request of the Applicants entitled “*In search of the Lesser Floricans in North Karnataka*” which is annexed at **Annexure F**. This note reveals that despite several years of rigorous field searches across many Districts, the researchers report “we are still not lucky with the other two species, the Lesser Florican and Jerdon’s Courser”.

With the future of three critically endangered bird species that are intricately linked to grassland ecosystems hanging in balance, and given the many exhortations by the Government of India and the Prime Minister's Office to make it a national priority to save the Great Indian Bustard and Lesser Florican, a call that has been repeatedly echoed by the International Union of Conservation of Nature and Natural Resources (IUCN), a concern which is also etched into Schedule I of the Wildlife Protection Act, 1972 listing these birds as critically endangered, the only way forward in securing a future of and for these species is to protect their habitats from diversion to industrial, infrastructure and institutional purposes. Nothing less will do.



#### **Flora of Chitradurga:**

On the request of the Applicants, Dr. N.M. Ganesh Babu, Senior Research Officer of the Foundation for Revitalisation of Local Health Traditions, a Centre of Excellence of the Union Ministry of Environment and Forests, volunteered “*A Note on the Floristic Diversity and Ethno-botany of Chitradurga District*” and a copy is annexed at **Annexure G**. This report is based on Babu's Doctoral thesis work defended successfully at Forest Research Institute, Dehradun in 2012 and also his extensive field work in Chitradurga district during 1999-2013.

On the overall importance of floristic diversity in Chitradurga district, Babu reports that:

“The intensive botanical studies conducted in Chitradurga District, during 2004 to 2010 have resulted in the collection of 1227 taxa of Angiosperms spread over to 142 families, 639 genera and 1196 species excluding infraspecific taxa of 8 subspecies, 23 varieties and 1 forma. The survey also yielded collecting 1 species of Gymnosperm and 10 taxa of Pteridophytes, thus taking the total up to 1238 taxa of vascular plants.”

Babu's unprecedented research effort has revealed that various species thought to be extinct are found in Chitradurga. In particular, 2 varieties of *Caralluma* species have been rediscovered in Karnataka, and that too in the Challakere grasslands, and that after a period of 80 years! The only other location that these plants are known to exist is in Pudukkottai of Tamil Nadu.



Babu's floristic survey of Chitradurga has resulted in several new records including 11 additions to flora of southern India, 4 additions to Deccan peninsula, 83 additions to flora of Karnataka State, 3 additions of genera to the flora of Karnataka State, 172 additions to the flora of eastern Karnataka, 31 additions of genera to the flora of eastern Karnataka and 10 additions of families to flora of eastern Karnataka. *The research has revealed that 4 taxa listed in the Red Data Book by the Botanical Survey of India are found in the region.* Of the 304 red-listed medicinal plants, 22 taxa are found in Chitradurga. Equally importantly, the research has revealed that 84 species of indigenous grass flora are found in the study area. Such extraordinary diversity of grasses in such a small area is to be celebrated and the landscapes protected, as grasses form the fundamental basis of securing food security of humans. Taking all this into consideration, the researcher reports that:

“The endemicity of flora in the district is unique and belies the common misconception that the region is dry, degraded and with low biodiversity value. **The researcher has documented that the district is a region of very high biodiversity value and the rate of endemicity is extremely high.** The study has revealed that 159 species of flora are endemic, out of which 4 are endemic to the district. Also 2 taxa discovered in the Amrit Mahal Kaval of Challakere Taluk are found only in the Tiruvanamalai hills of Tamilnadu, viz., *Caralluma adscendens* var. *carinata* and *Caralluma adscendens* var. *gracilis*, both being of critical importance as medicinal plants and also of economic value. **In fact these plants are in very high demand amongst pharmaceutical companies, and need to be preserved immediately in their natural settings, especially because they have been rediscovered after 80 years, and arguably need to be classified as critically endangered.**

The study has also revealed that some species of flora, including endemic taxa, which are found in other parts of the country have only been recorded in the Challakere area and nowhere else in the state of Karnataka.” (Emphasis supplied.)

The study has also revealed that the local communities, in particular the tribes associated with the Amrit Mahal Kaval grassland ecosystems, have extraordinary knowledge on the utility of plants, both for human needs and veterinary purposes. The following observation is made by the researcher about this relationship between the Kavals and the people:

During the entire phase of the study, the Researcher had presumed that the Amrit Mahal Kaval Grasslands of Challakere Taluk were under the least threat, compared even with protected forests in the rest of the district. **In fact, the researcher had observed that the local communities in and around the Kaval area of Challakere Taluk were extremely sensitive to the biodiversity value of these unique grassland ecosystems, and their use of this range for pastoral and other needs did not tax the ecosystem beyond sustenance limits.**

The researcher observed that the interdependence between the local agrarian and pastoral communities and the grasslands was extremely complex and complementary. For instance, **pastoral communities would sensitively graze the grasslands without resorting to overgrazing, and the grass was managed in a way**

that would allow endangered species like the Black Buck to thrive. Were it not for the interventions of pastoral communities, the uncontrolled growth of grasses would have risked spread of fires, which would have devastated the unique flora of the region.

**The knowledge of plants and their use as medicines, in craft, for economic value and food amongst the pastoral and agrarian communities of Challakere Taluk is extremely high, and arguably is highest in the entire district.** This is probably because this population has been least disturbed over time and their relationships with local ecological landscapes has remained undisturbed. **The Kaval lands form the core of this relationship, as it is also a space for the practice of a variety of religious and cultural rituals.** Such is the intensity of dependence on flora amongst the local communities, that it is evident in their folklore, often in the form of songs. (Emphasis supplied)

Based on such extensive field study and research, Babu concludes that “the conservation of the Amrit Mahal Kaval in Challakere Taluk of Chitradurga district of Karnataka state as a natural grassland ecosystem is of critical importance to the conservation of such habitats and species unique to such ecological type.”

## SECTION VI: DIVERSION OF AMRIT MAHAL KAVALS – A RECIPE FOR ECOLOGICAL DISASTER

The Applicants submit that the extensive scientific evidence submitted in this report to the Expert Committee, reveals that Mr. K. S. Saibaba, IFS, Secretary (Forests), Department of Forests, Ecology and Environment, in his submission<sup>15</sup> before the Honourable National Green Tribunal, has worked at defending an ecologically unwise, socially destructive and illegal decision of the State. In so doing, he has been unmindful of the fact that such defence of the State's decisions is in gross variance to and agitates against statutory obligations as set out in the Wildlife (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986, the Biological Diversity Act, 2002, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, amongst others. The mandate in these laws is clearly one for conserving wild flora and fauna, especially when they are highly threatened or critically endangered, and for protecting their habitats, and associated traditional knowledge and livelihoods. None of these statutory obligations have at all been considered in formulating the decisions to divert the Kaval, or even in the Secretary's defense of such decisions before the Honourable Tribunal.

The Applicants submit that the Secretary's submissions are also in gross disregard of the recommendations of the National Wildlife Board chaired by no less an authority than the Prime Minister of India. The Board has specifically and repeatedly highlighted that conservation of habitats supporting critically endangered or highly threatened species of flora and fauna must be a primary concern of the Departments of Forests and Environment, and that such important considerations should not be subordinated to any other cause or purpose. The National Wildlife Action Plan asserts that there must be heightened concern over the fragility of grassland ecosystems and that high priority must be accorded to conservation of such habitats as they form an essential pre-condition to securing the futures of critically endangered species such as the Great Indian Bustard and Lesser Florican, and highly threatened fauna such as the Blackbuck, Deccan Wolf, etc., which collectively inhabit such areas..<sup>16</sup>

It is a evident and widely held concern that the rich floral and faunal biodiversity contained in the Challakere grasslands has been least appreciated by the formal systems of the State, which appear to be a result of a combination of institutional lethargy, secrecy in decision making and a rather perverted presumption that grassland ecosystems aren't worthy of protecting as they do not constitute "forests" in the rather dated understanding of their ecological importance. Equally disturbing is the fact that there exists no recent official record of an effort to study the biodiversity of these rare and sensitive ecosystems. This lacuna in developing such critical information has probably led an officer of the stature of Secretary (Forests) to claim in his Statement before the Honourable Tribunal that Challakere's Amrit Mahal Kaval is merely "dry, open grazing tracts with scanty scrub vegetation"<sup>17</sup> and, thus, not at all worthy of protection.

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<sup>15</sup> Submission of Mr. Saibaba, IFS, Secretary (Forest), Department of Forests, Ecology and Environment, Government of Karnataka, in response to Applications 6 and 12/2012 filed before the Honourable National Green Tribunal.

<sup>16</sup> Centre for Environment Law, WWF-I v. Union of India & Ors. Writ Petition (Civil) No.337 of 1995 with IA No. 3452 in WP(C) No.202 of 1995 ; also T. N. Godavarman Thirumalpad v. Union of India and others in W.P. (C) No. 202/95

<sup>17</sup> *National Wildlife Action Plan (2002-2016)* 2002, Ministry of Environment and Forests, Government of India.



**Mala Fide Valuation and Representation of the Social Significance of the Amrit Mahal Kaval grasslands:** The Applicants submit that the entire process of selecting the Amrit Mahal Kavals in Challakere for locating various defence, nuclear, technology, infrastructure, industrial, housing, institutional and commercial ventures is based on a variety of decisions which are markedly *mala fide* and *void ab initio* as they are in patent violation of law, various principles of Indian jurisprudence and lack sensitivity and the rationale in securing wider public interest. Further, the decisions constitute the unilateral view of a few individuals, without in the least providing any evidence that requisite and due consultation with the wide public and elected representatives preceded such major decisions. This is particularly worrying given the massive implications of the decisions supporting the diversion of Challakere Kavals on present and future generations.

**Site originally selected for DRDO project in Chitradurga, not Challakere Kavals:** The proposals to locate a slew of projects in Challakere appear to have been formulated on suspiciously weak assessments of the land-use demands of the proposed projects and in comprehensive violation of applicable site selection criteria. The Applicants submit that there is evidence that some or all of the projects were never intended to be located in Challakere Amrit Mahal Kavals. In fact the original decision was to acquire agricultural land in a wholly different location to site the Defence Research & Development Organisation's proposed projects.

From a letter dated 11<sup>th</sup> January 2007 of Mr. K. Amar Narayana,<sup>18</sup> IAS, then Deputy Commissioner of Chitradurga District to the Tahsildars of Challakere and Hiriya Taluk, it is evident that the Department of Defence of the Government of India had requested initiation of acquisition of 3,557 acres of land to establish a research and development centre and airbase in various villages of Challakere and Hiriya Taluks. This letter suggests that the initially identified area (comprising privately-owned agricultural land) satisfied the strict standards essential for the establishment of the sensitive defence project. In fact site-specific surveys to justify such a complex decision had been undertaken before initiating land acquisition measures, and this included verifying and dismissing Challakere's Amrit Mahal Kavals as inappropriate for locating the project. It is also evident from the letter that the matter of acquiring private agricultural land had reached a very advanced stage and, as the Deputy Commissioner reports, the only aspect remaining was determination of rehabilitation package and compensation for acquiring the land. The Applicants submit that affected villagers were willing to part with their agricultural lands as is evident from the letter they wrote to the Deputy Commissioner.

The concern to protect the Amrit Mahal Kavals can also be discerned from the fact that the Executive Director of the Karnataka Sheep and Wool Development Corporation Ltd. by his letter dated 20<sup>th</sup> August 2007,<sup>19</sup> rejected the proposal of the Deputy Commissioner of the Chitradurga district to promote private bio diesel plants in the Khudapura Kaval.

**Questionable intervention of Member of Parliament to relocate DRDO projects:** In the backdrop of such developments, Justice (Retd.) N.Y. Hanumanthappa, former Chief Justice of Orissa High Court

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<sup>18</sup>Letter dated 11<sup>th</sup> January 2007 (No. LAQ:CR:210/2006-07) of Chitradurga Deputy Commissioner Mr. K. Amar Narayana to Tahsildars of Challakere and Hiriya Taluks.

<sup>19</sup>Letter dated 20<sup>th</sup> August 2007 (No. KKAANN: JAI:EM:Plants: 2007-2008:987) of Executive Director, Karnataka Sheep and Wool Development Corporation Ltd.



and then Member of Parliament (Lok Sabha) representing Chitradurga Constituency, preferred to promote the diversion of Challakere Amrit Mahal Kavals over acquisition of private agricultural lands which is evident from his letter dated 30<sup>th</sup> March 2007 to Union Minister for Defence Mr. A.K. Anthony, a copy of which is annexed at **Annexure H**. In this letter Justice Hanumanthappa claims that the ongoing process of acquisition of land would be “time consuming”, would involve “huge amount of compensation” and “may result in litigation”. On such assumptions he proposed that the project should instead be shifted and relocated in the Amrit Mahal Kavals of Challakere Taluk which he claimed “is plain land without any interruption”, and that “the advantage here is that there is no question of acquisition of land and payment of compensation”. He also asserted that the area constitutes “Government land (which) can be acquired for defence requirement... and there will be no procedural hazards”, besides “the Government need not spend unnecessarily a heavy amount for land acquisition which is time consuming”. It is evident from this letter that the proposal has not been backed by any factual assessment, and they appear to be merely conjectural.

Subsequently as well, no assessment seems to have been made to accurately determine whether the Amrit Mahal Kavals of Challakere are indeed appropriate for location of DRDO and other projects. In addition, there is also no evidence of any assessment to establish the claim that the Amrit Mahal Kavals of Challakere constitute degraded lands.

**Devious representation of facts to divert Amrit Mahal Kavals:** On 7<sup>th</sup> February 2008, Mr. Amlan Aditya Biswas, IAS, then Deputy Commissioner and District Magistrate of Chitradurga District, in a letter to Mr. Sudhakar Rao, IAS, then Additional Chief Secretary to the Government and the Development Commissioner of Karnataka, a copy of which is annexed at **Annexure I**, argued for the comprehensive diversion of the Challakere grasslands to a variety of defence, industrial, institutional, commercial and infrastructural development projects. Mr. Biswas’ letter to the Development Commissioner does not reveal the fact that alternative land had already been selected for the proposed DRDO project and that the process had reached an advanced stage, including negotiation for settlement with project affected farmers. In so arguing his case for diversion of the Amrit Mahal Kavals, Mr. Biswas relied on a highly specious assessment of the dependence of pastoral and agrarian communities on the Challakere Kavals, claiming, for instance, that Ullarthi village, one of the most densely populated villages in the impact area, has a mere 19 heads of cattle per the 17<sup>th</sup> census of Livestock in Karnataka! On the basis of such specious claims he promoted the factually incorrect proposition that the Amrit Mahal Kavals, by and large, are useless to the local communities and can thus be diverted for any other purpose.

**Devious misrepresentation of Karnataka High Court's directions:** Mr. Biswas further develops this specious argument by relying on the 20<sup>th</sup> March 2001 decision of the Honourable High Court of Karnataka in WP no. 17954/1997 (PIL)<sup>20</sup> dated 20<sup>th</sup> March 2001 and also the opinion of the Karnataka Law Department<sup>21</sup> and questionably claims that “neither the Judgement in WP no 17954 of 1997, nor the KLR Act and Rules bar or foreclose” the possibility of diverting the Kavals. He further cites in his letter the following text, which he claims is an extract of the High Court direction:

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<sup>20</sup> Kariyappa & Ors v Tehsildar, Holalkere & Ors, Writ Petition 17954 of 1997 in the High Court of Karnataka at Bangalore

<sup>21</sup> Order No. : AHF 07 AMA –BHV 2001 and No.LAW 818 OPINION -111 2003, Karnataka Law Department, dated 14<sup>th</sup> October 2003

“...even assuming that any extent of land is to be **re-reserved** under the Act, and the Rules and granted favour of any other **purpose**, it can be done only in consonance with the requirements of Rule 97 of **KLR** Rules and after it is ascertained as a matter of fact that any extent of reserved gomal land is in excess of the requirements of the village cattle.” (Emphasis supplied)

The Applicants submit that there has been a deliberate mischief on the part of Mr. Biswas in so claiming the text he quoted in his letter to the Development Commissioner is an extract of the Order of the Honourable Karnataka High Court, A careful review of the order reveals that Mr. Biswas has cleverly controverted the very meaning and purpose of the Order by replacing key words in the extract and deleting some important words, thus comprehensively misrepresenting the very rationale, intent and purpose of the Court's direction. The applicants submit the exact quote of the same relevant portion of this Order, which is as follows:

“Even assuming that any extent of land in this survey number is to be **de-reserved** under the Act and the Rules and granted in favour of any other **persons** for cultivation etc., it can be done only in consonance with the requirements of Rule 97 of the **Rules** and **only** after it is ascertained as a matter of fact that any extent of reserved gomal land is in excess of the requirements of the village cattle.” (Emphasis supplied)

The Applicants also submit that the rationale and logic of the Honourable High Court’s Order can be best appreciated by considering the entire textual context within which the above extract appears:

“Whether it is called as Amruth Kaval land or gomal land, it is a reserved land within the meaning of Section 71 of the Act read with Rule 97 of the Karnataka Land Revenue Rules. If this is the position, then this land is meant to be preserved for this purpose and not to be diverted for any other purpose. Even assuming that any extent of land in this survey number is to be de-reserved under the Act and the Rules and granted in favour of any other persons for cultivation etc., it can be done only in consonance with



the requirements of Rule 97 of the Rules and only after it is ascertained as a matter of fact that any extent of reserved gomal land is in excess of the requirements of the village cattle. The respondents are duty bound to act under the Act and Rules and are duty bound to comply with the requirements of the statutory provisions. **The respondents are also duty bound to ensure that the lands reserved for such purpose is preserved and protected for the use for which it is reserved and no portion of that land is in any way diverted or illegally encroached upon by any other persons.** Taking up cultivation in the reserved land by any person is obviously an illegal activity and the Act and the rules confer power on the respondents to take

appropriate action against such illegal occupants and to ensure that the reserved land is freed from such forcible illegal occupation.” (Emphasis supplied)

**Kaval diversion in violation of Karnataka Government Circular:** The Applicants bring to the attention of the Expert Committee that consequent to this Order of the High Court, a circular was issued by the Karnataka Department of Animal Husbandry and Fisheries on 28<sup>th</sup> February 2004,<sup>22</sup> wherein the following directions were issued:

“A question has arisen as to whether the decision of the State High Court would be applicable to lands in all Amrit Mahal Kavals. This has been considered in consultation with the Law Department. The Law Department has given its opinion to state that analysing the provisions of the Karnataka Land Revenue Rules and Section 71 of the Karnataka Land Revenue Act requiring the Government to protect the Amrit Mahal Kavals as Gomala lands in the State the High Court of the State has given its judgement and the Court has further directed to protect Amrit Mahal Kaval lands like Gomala lands and as such the decision is applicable to all Amrit Mahal Kaval lands and therefore it cannot be limited to the land in question in the Writ Petition.

The Court has given the historic decision to decide the dispute in public interest. In this back ground to protect Amrit Mahal Kavals lands as Gomala lands if there is any appropriation occupation, necessary action may be taken with the Co-operation of Revenue and Police Department to get the appropriation occupation vacated. All Sections of the state are hereby requested to cooperate with the Government to protect Amrit Mahal Kaval lands as Gomala lands.

Mr. Biswas as Deputy Commissioner was duty bound to comply with this direction from the Karnataka Department of Animal Husbandry and Fisheries which had been issued after due consultation with the Law Department. But for reasons best known to him, he preferred to not bring these critical facts to the attention of the Development Commissioner, which the Applicants submit was not just any trivial oversight, but may have been deliberate.

**Weak review by Development Commissioner of Kaval diversion decisions:** The Development Commissioner on his part was duty bound to thoroughly assess all these aspects prior to formulating any approval on the part of the Government for the alienation of the Challakere Amrit Mahal Kavals. In so doing, due consultation with, and consent of, the appropriate Panchayats, and offices of the relevant Divisional Commissioners, Forest officials, Revenue officials, Animal Husbandry Department., etc., is required per well established principles of administrative law. This requirement of wide consultations, building consensus for the decision from all relevant authorities, consideration of all relevant reasons, and a diligent application of mind was particularly essential considering the Government of Karnataka's circular instructing all agencies “to cooperate with the Government to protect Amrit Mahal Kaval lands as Gomala lands.” The Applicants state that there is no evidence whatsoever that any consultation at all took place with any of the concerned Government departments prior to diversion of the Amrit Mahal Kavals. Further, absolutely no statutory

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<sup>22</sup>Circular dated 28<sup>th</sup> February 2004 (No. Pasam Mee 7 AaMaBhu:2001) from the Principal Secretary, Department of Animal Husbandry and Fisheries of the Government of Karnataka

consultation was ever undertaken with affected communities directly, or their elected representatives, prior to so alienating them from their livelihoods-sustaining Kavals.

**Specious determination of livestock population and community dependence on the Kavals:** Crucially, Mr. Biswas, in his letter to the Development Commissioner, admits that any decision assessing the availability of Amrit Mahal Kaval land for a purpose other than pasturage could only be undertaken “after ensuring normative availability of grazing land for the village cattle. A key issue here is village cattle.” (Emphasis as in original) Thereafter, Mr. Biswas proceeds to claim that the “Table above clearly gives the excess Kaval available even after providing adequately for the Cattle in adjoining villages.” The Applicants draw the attention of this Committee to an entry in Mr. Biswas’ table wherein he claims, for instance, that only 19 heads of Cattle exist in Ullarthi village of Challakere Taluk as per the 17<sup>th</sup> Census.



The Applicants state that a bare review of the 18<sup>th</sup> Census of Livestock in Karnataka<sup>23</sup> undertaken in the year 2007 reveals that Ullarthi village has 52 heads of Cattle, and that the population of Goats and Sheep is 428. Surprisingly, Mr. Biswas relies on an earlier assessment, 17<sup>th</sup> Livestock Census, to back his claim that the village has merely 19 heads of Cattle and 317 Goats and Sheep. The Applicants submit that Mr. Biswas’ overall assessment is grossly inaccurate even per the 17<sup>th</sup> Livestock census and such inaccurate representation of fact amounts to a mischievous engagement in a dubious number game and is in violation of the Civil Services Rules that govern the conduct of an officer vested with important aspects of governance. And all this has been done to buttress his claims that the biodiversity-rich, livelihood-supporting Kavals are unnecessary for local communities, and thus can be diverted to any other purpose.

Such mischievous representation and interpretation of data and fact militate against his statutory duty to ensure accuracy in his submissions to the Government, particularly when such submissions are of key relevance to the Fundamental Rights of citizens. The Government on its part should have verified the accuracy of Mr. Biswas’ statements, and having clearly failed to do so, is complicit in allowing decisions that attack the very basis of survival of local communities and of critically endangered species and threatened ecosystems.

**Power under Land Revenue Act not unfettered:** The power vested in the Deputy Commissioner as per Rule 97 (4) of the Karnataka Land Revenue Rules, 1966 has to be wielded with extraordinary precaution as it directly affects the fundamental right to life and livelihood of people, especially those from pastoral and agrarian communities. The belittling of the actual demand for pasture land in the form of Amrit Mahal Kavals in Challakere seems to have been done to mischievously justify the wrongful diversion of these lands to various projects and the enormous and irreversible cost to local communities, biodiversity, the environment, and the environmental rights of Indian citizens. In addition, it seems unlikely that it is a mere oversight on the part of Mr. Biswas, as he has diverted the Amrit Mahal Kavals to various projects without conforming with a crucial oversight mechanism instituted in Rule 97 (4) which requires (in the context of decisions de-reserving lands reserved for

<sup>23</sup> Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture, Government of India, 18<sup>th</sup> Census of Livestock in Karnataka available at <http://dahd.nic.in/Default1.aspx> ; last accessed on 24<sup>th</sup> June 2013

cattle pasturage) that if the Deputy Commissioner “considers that the extent of free pasturage may be reduced below the prescribed limit, he should do so only after obtaining the prior permission of the Divisional Commissioner.” (Emphasis supplied) From the orders issued by Government of Karnataka in transferring the said Amrit Mahal Kaval lands to various projects, which are part of the records submitted by the Applicants before the Honourable Tribunal, it is evident that no such prior permission of the Divisional Commissioner was at all obtained by Mr. Biswas.

In his letter to the Developmental Commissioner, Mr. Biswas also states that “as per 108 (N) of KLR Rules, State Government may *suo moto* or on recommendation of Deputy Commissioner or Regional Commissioner relax the bar on granting of Kaval lands contained under Rule 108 (I) if it feels the grant is just unreasonable.” Interestingly, Mr. Biswas seems to have overlooked the cautions that need to be exercised in using the power under Rule 108 (N) as well, wherein it is required that when the relevant authority “is of the opinion that in the circumstances of any case or classes of cases, it is just and reasonable to relax any of the provisions of these rules, it may, by order direct such relaxation, recording reasons for such relaxation, subject to such conditions as may be specified in the orders”. The available evidence suggests that no such caution was exercised in diverting at least 10,000 acres of the Amrit Mahal Kaval grassland ecosystems of Challakere Taluk.

In a case involving a significantly similar legal issue relating to powers and duties of the jurisdictional Deputy Commissioner in the diversion of gochar (grazing lands) for a government hospital in Jharkhand, the Honourable Supreme Court has observed: “[w]e should however note that such de-reservation of any government land reserved as *gochar*, should only be in exceptional circumstances and for valid reasons, having regard to the importance of *gochar* in every village...Any requirement of land for any public purpose should be met from available waste or unutilized land in the village and not *gochar*. Whenever it becomes inevitable or necessary to de-reserve any *gochar* for any public purpose (which as stated above should be as a last resort), the following procedure contemplated in Regulations 24 and 25 and section 38(2) [this procedure as per the applicable law in Jharkhand involves a detailed note from the jurisdictional Deputy Commissioner giving reasons why the *gochar* land has been identified for non-grazing public purpose, a record of the non-availability of other land for such public purpose, the sanction of the State Government, a requirement that before sanction is granted the minimum needs of the affected villagers is considered and a public consultation is held with them, making alternative *gochar* land available to the affected villagers immediately or soon thereafter if the de-reservation is sanctioned, etc.] should be strictly followed.”<sup>24</sup>

**Private profiteering from land claiming public interest?** The lackadaisical approach with which the diversion of Challakere Kavals has been addressed by the authorities and the brazen attempt by several of the Respondents to defend the same deserves a careful close scrutiny as the diversion is not merely in aid of proclaimed public sector and national interest projects, but also appear to be advancing the private profit of a variety of real estate developers. The Applicants submit that M/s. Sagitaur Ventures India Pvt. Ltd. is one of such private beneficiaries and actually secured about 1,000 acres of land at Sy. No. 343 of Varavu Kaval of Challakere Taluk Chitradurga District after the filing of the aforementioned Applications before the Honourable National Green Tribunal. This is evident from the Order of the Government of Karnataka dated 14<sup>th</sup> February 2013<sup>25</sup>, as supplied by M/s.

<sup>24</sup> State of Jharkhand v. Pakur Jagran Manch, Supreme Court of India, Civil Appeal No. 436 of 2011, dated January 2011.

<sup>25</sup> Order of the Government of Karnataka dated 14<sup>th</sup> February 2013 (No. RD 13 LGC 2013) granting 1,000 acres of land in Challakere on lease to M/s. Sagitaur Ventures Pvt. Ltd.



Sagittaur Ventures India Pvt. Ltd before the Tribunal. It is also evident from this Order that the Company has received largesse from the State as it has managed to secure this 1,000 acres of land for a paltry monetary consideration of Rs. 45,00,000 for a 30 year lease. Such grant of lands raise a variety of concerns relating to propriety and legality, particularly given that this area is ecologically rich and a habitat for critically endangered species and also a major livelihood resource for pastoral and agrarian communities.

The Applicants submit that this land transfer to M/s. Sagittaur Ventures India Pvt. Ltd is a particularly wrongful act on the part of the Government, given the fact that the Company appears to have had no history whatsoever in developing a solar power plant. The submission made by the Company claiming competence in the solar power generation sector has to be thoroughly verified particularly given that the claim has been made before the Honourable Tribunal, and also considering that a review of the Company's activities, as advertised on its website,<sup>26</sup> strongly suggests that the company is merely a promoter of various commercial real estate ventures.



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<sup>26</sup> Available at <http://www.sagittaur.com/> ; last accessed on 21<sup>st</sup> June 2013

## SECTION VII: A CASE FOR PROTECTING THE AMRIT MAHAL KAVALS OF CHALLAKERE TALUK, CHITRADURGA DISTRICT AS “FORESTS”

The Applicants have submitted through their applications before the Hon'ble Tribunal a variety of evidence to demonstrate that the Amrit Mahal Kaval lands of Challakere Taluk, Chitradurga District comprise a region rich in biodiversity and are entitled to protection as a District Forest per relevant provisions of the Karnataka Forest Act, 1963, the Karnataka Forest Rules, 1969 and the Karnataka Forest Manual. Consequently, provisions of the Forest (Conservation) Act, 1980, the Wildlife (Protection) Act, 1972, the Biological Diversity Act, 2002 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 also govern decisions on how these lands are used.

Karnataka's Forest Secretary in his submission has claimed, for instance, that since the said Amrit Mahal Kaval lands “were assigned a public purpose, as grazing lands for the Amrit Mahal cattle breed, by definition they do not fall into the category of district forests or into any other category of statutorily constituted forest under the Karnataka Forest Act, 1963.” To buttress this claim, the Secretary has submitted the 1901 Rules for the management of district forests based on which he has stated that:

these rules specifically excluded the Amrut Mahal Kaval lands. In other words, the said Amrut Mahal Kaval lands were not considered part of the district forest clearly on the ground that the said lands, though at the disposal of the Government and though not included within the limits of any state or village forest, has been assigned at the survey and settlement as land set apart for specific public purpose, viz., the grazing of Amrut Mahal breed of cattle.” Further developing this argument, the Secretary claims “if by definition “Amrit Mahal Kaval lands” are District forests, there is no necessity of rule (33), as the rules for the management of District Forest apply automatically to Amrit Mahal Kaval lands. Since they are not District Forests, a special provision through rule 33 is provided for managing these grazing lands. Hence, rule (33), by imputation will not make Amrit Mahal Kaval lands “District Forest”. It is only an enabling provision under the Karnataka Forest Rules, to the Animal Husbandry department for managing these grasslands.

The Secretary further facetiously attempts to defend this line of argument by dismissing the applicability of the Honourable Supreme Court's directives in *T. N. Godavarman Thirumalpad v. Union of India and others*,<sup>27</sup> claiming that an area to be defined as “forest” needs the following characteristics:

- “The area should be large
- There should be dense or thick cover of trees”

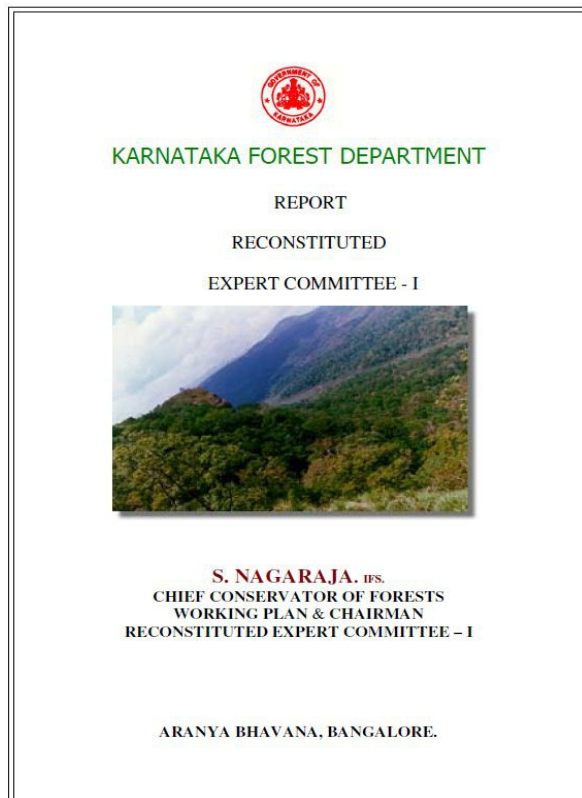
**Trees aren't the only feature defining forests:** So arguing, the Secretary claims that “Areas of Amrut Mahal Kaval lands granted to various organisations..., do not have any dense/thick growth of trees, to consider them as “forests” by dictionary definition. In fact, they are dry, open grazing tracts with scanty scrub vegetation.” Moreover, the Forest Secretary has also submitted “that the Amrit Mahal

<sup>27</sup> T. N. Godavarman Thirumalpad v. Union of India and others in W.P. (C) No. 202/95

Kavals are not Reserved Forests/Village Forests/District Forests and that **they are not mentioned as forests in any Govt., record and that they cannot be construed as forests by dictionary definition.**" (Emphasis supplied).

The Applicants submit that the central premise of the Forest Secretary's submission that the Amrit Mahal Kavals are not "forests" seems to be based on a rather myopic and incorrect insistence that for an area to be recognised as a "forest" in accordance with the Honourable Supreme Court's direction a 'dense or thick cover of trees' is a *sine qua non*. This understanding is demonstrably wrong given the incontrovertible fact that many ecosystems in numerous states across India, take Rajasthan and Jammu & Kashmir for paradigmatic examples, have had areas declared as "forests" in accord with the Honourable Supreme Court's directions on adopting a dictionary meaning of forests – in these cases, the parameter/criterion for such declaration has been more nuanced than a mere reliance on stand density or crown density of trees, keeping in mind the special bio-geographic characteristics of the ecosystems (for example, dry grassland, desert, or alpine meadow) and the State under analysis. The Applicants submit that the Secretary (Forests) reliance on an outdated understanding (of 'forests' = trees) simply does not recognise that a number of site-specific factors/criterion that are specifically tailored to address the unique bio-geographic and social realities of the ecosystems and areas (and at a broader level, the entire State landscape) under analysis have to be the basis for deciding whether a particular area is a 'forest' or not as per the dictionary meaning as required by the Honourable Supreme Court.

**Latest policy recognises Grasslands as worthy of protection as forests:** To further emphasise this point, in similar vein, the "*Draft Policy on Inspection, Verification, Monitoring and Overall Procedure Relating to Grant of Forest Clearance and Identification of Forests*", dated 12<sup>th</sup> June, 2013, and recently released by the Ministry of Environment and Forests, includes such a site-specific understanding and recognises that in some of the North Eastern states where cadastral survey has not been undertaken and credible land surveys are not available, a "[m]ajor portion of forest in these States may therefore, be defined so as per dictionary meaning only. Identification of forests as per dictionary meaning in these States in an objective **and transparent manner**, has to be based on certain objective parameters. Suggested parameters are (i) stand density (no. of trees per hectare); (ii) crown density (percentage foliage cover); (iii) **minimum extent of contiguous forested area**; (iv) **nature of vegetation (horticulture/forestry)**; (v) **origin (naturally grown or man-made)** and an appropriate



**combination thereof.**<sup>28</sup> By analogous reasoning, given the wide variety of bio-geographic diversity in the nature of forests in the State of Karnataka, a set of relevant parameters suited for appraisal of grassland ecosystems must come into play when deciding upon the question of whether the Amrit Mahal Kavals are 'forests' or not as per the Supreme-Court interpretation of how the phrase dictionary meaning of 'forests' is to be interpreted. Given the truly unique floral, faunal, historical and social attributes of the Amrit Mahal Kavals that have been outlined throughout this Report and in the Applicants' submissions before the Honourable National Green Tribunal, there remains no doubt that the Kavals undeniably constitute 'forests' deserving of protection and conservation in accord with the spirit of the Forest (Conservation) Act, 1980 and the rulings of the Honourable Supreme Court in *T. N. Godavarman Thirumalpad v. Union of India and others*.<sup>29</sup>

**Karnataka's submission to Supreme Court acknowledges Amrit Mahal Kavals are District Forests:**

The fact that the Amrit Mahal Kavals are 'forests' as per both (a) the dictionary meaning of forests, and (b) the fact that they have been statutorily and authoritatively recognised as 'forests' also, has a considerable genealogy within the official decision-making processes in Karnataka itself, which further negate the persuasive force within any of the Secretary (Forests) submissions in the instant case. This is amply evident in "*A Report of the Reconstituted Expert Committee- 1*" chaired by Mr. S. Nagaraja, IFS, Chief Conservator of Forests, Working Plan and Chairman, Reconstituted Expert Committee- 1 of the Karnataka Forest Department, which constitutes an official report of the State of Karnataka and has been developed in furtherance of the directions of the Honourable Supreme Court in *T. N. Godavarman Thirumalpad v. Union of India and others*.<sup>30</sup> The report, in fact, categorically states that it is based on affidavits filed by the State of Karnataka before the Supreme Court. It is beyond dispute that the submissions made in this report have been arrived at after a very thorough review of various interconnected facts and a deliberate process of rationalisation, as is confirmed in the Introduction to the report.

In appreciating the letter and spirit of the aforesaid directions of the Honourable Supreme Court, in particular the meaning and definition of the term "forest", for operational and legal purposes, as also its temporal and spatial understanding, the Reconstituted Expert Committee of the Karnataka Forest Department has stated as follows:<sup>31</sup>

2.The word "Forest" and "Forest Area" has been discussed in detail and understood as follows: - 'Forest' has been defined in the Govt. Forest Act 1865 (Act of VII of 1865) as "land covered with trees, brushwood or jungle, and declared to be Government forest under the act." But as a matter of fact, it has been recognized that no legal definition is practicable or use. The later acts like the Indian Forest Act, 1878 (Act VII of 1878), the Indian Forest Act, 1927 (XVI of 1927), the Mysore Forest Act, 1900 (Act XI of 1900) and the Karnataka Forest Act, 1963, (Act No.5 of 1964) have not defined the 'forest'. However, the forest has been interpreted for the

<sup>28</sup> "*Draft Policy on Inspection, Verification, Monitoring and Overall Procedure Relating to Grant of Forest Clearance and Identification of Forests*", Union Ministry of Environment and Forests, dated 12<sup>th</sup> June, 2013 <http://www.moef.nic.in/content/draft-policy-fc>; last accessed on 23/06/2013

<sup>29</sup> *Supra* note 27

<sup>30</sup> *Id*

<sup>31</sup> *Reconstituted Expert Committee Report 2004*, Karnataka Forest Department

purpose of Chapter 5 of Karnataka Forest Act 1963, as ‘forest’ includes any land containing trees and shrubs, pasture lands and any land whatsoever which the State Government may, by notification under this section, declare to be a forest.

Based on such acknowledgement that the term “forest” is fraught with contradictory and insufficient interpretations in various laws, the Expert Committee’s Report has categorically determined that Amrit Mahal Kavals are indeed “District Forests”, and in the following manner:

“5.9) Amrith Mahal Kaval:- **Amrith Mahal Kaval is a district forest.**

According to Section 33 of Karnataka Forest Rules, 1969 the Rules for Management of District Forests shall Mutatis – Mutandis applied to Amrit Mahal Kaval which mean and include the land assigned for the Govt. for the pasturage of Amruth Mahal Cattle owned by the Government.”<sup>32</sup> (Emphasis supplied)

The Applicants submit that the Karnataka Forest Dept., being the designate agency on behalf of the State of Karnataka to determine what constitutes a “forest”, has incontrovertibly confirmed that Amrit Mahal Kavals are indeed “Forests”<sup>33</sup> within the intent, meaning, and ruling of the Honourable Supreme Court in *T. N. Godavarman Thirumalpad v. Union of India and others*.<sup>34</sup> Consequently, the action on the part of the Deputy Commissioner of Chitradurga District to have diverted the said Amrit Mahal Kavals to a variety of infrastructural, industrial and research purposes is in clear contempt of the Honourable Supreme Court’s directives.

**Karnataka Government's expediency in the defence of Amrit Mahal Kavals as forests:** The submissions of the Secretary (Forests) before the Honourable Tribunal on what constitutes a “forest” is, thereby, fraught with various inconsistencies and inaccuracies. Rather than relying on the import of the aforesaid Expert Committee Report’s findings on the status of the said Kavals as “Forests”, for reasons best known to him he has relied instead on a rather dated definition of “District Forests” as defined in *General Rules For The Management Of District Forests, And Other Lands At The Disposal Of Government*, No. 245-1800, dated 2<sup>nd</sup> October 1901 published in the Mysore Gazette, Volume. XXXVI, No.41, dated 10<sup>th</sup> October 1901. The Applicants wish to emphasise that such a dated and colonial interpretation of what constitutes a forest and of peoples’ relationships with forests, is also in gross variance to the letter and spirit of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, for instance. In what appears to be a desperate defence of a patently illegal decision to divert the Challakere grasslands without securing the consent of the Central Government in accord with the binding directions of the Honourable Supreme Court of India, as the Amrit Mahal Kavals are indeed forests, the Secretary has proceeded to provide a one- sheet extract which is undated and without citation before the Honourable Tribunal (as part of his submissions), wherein it is claimed that it is from an “Expert Committee Report” of what are “Deemed Forests”, and that only 323.9 Acres of Amrut Mahal Kavals at Parusharampura Kaval of Challakere Taluk of Chitradurga District can be regarded as forests. This document is purportedly claimed to have been issued by the Deputy Conservator of Forests, Chitradurga Division. In light of the absence of any satisfactory bibliographical data, alternate citation information, and contextual completeness of the original source of this extract, the Applicants are constrained to question the

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<sup>32</sup>Supra note 31 at 12

<sup>33</sup>Supra note 31 at 3

<sup>34</sup>Supra note 27



very authenticity and relevance of this document in deciding upon this important question. If, merely for the sake of argument this extract were acceptable, the overall logic of the Secretary (Forests) submissions is still seriously undermined: how can anyone claim at the same time, without a patent contradiction, that the Amrit Mahal Kavals “are not mentioned as forests in any Govt., record and that they cannot be construed as forests by dictionary definition” and that “Amrut Mahal Kavals at Parusharampura Kaval of Challakere Taluk of Chitradurga District can be regarded as forests”?

The Applicants submit that such expedient interpretations and submissions to belittle the importance of according protection for Amrit Mahal Kavals betrays a serious lack of commitment to discharge statutory and constitutionally obligatory functions to protecting biodiversity-rich and ecologically sensitive grassland ecosystems (that Amrit Mahal Kavals of Challakere indeed are). There appears to be gross inconsistency and a shocking lack of a principled, scientific approach in the manner in which the State of Karnataka is interpreting the degree and extent to which protection needs to be accorded to Amrit Mahal Kavals as “forests”. It is a matter of regret for the Applicants to submit that this appears to be a potentially deliberate and *malafide* exercise of executive power. For instance, it is an undeniable fact that the Amrit Mahal Kavals in Chikmagalur District are protected as forests as reported in a letter dated 18<sup>th</sup> September 2008<sup>35</sup> of the Deputy Conservator of Forests, Chikmagalur Division, to the Deputy Commissioner, Chikmagalur District. This letter, in fact, highlights that even when 20 to 25 individuals of the highly endangered Blackbucks are found to be inhabiting Amrit Mahal Kaval grassland ecosystems, as is the case in Sy. No. 1 of Basur village, they are a fit case for according protection even though they are “not notified reserved forests, but are district forests under Rule 33 of the Karnataka Forest Act.” In fact it is stated in the letter that “Section 33 of the Karnataka Forest Act, 1963, describes about the management of the District Forests in the State, and Rule 33 of Forest Rules 1969, considers all the Amrit Mahal Kaval of the State under district forests and rules for the management of district forest should, mutatis mutandis, apply to Amrut Mahal Kavals.” In addition, the Forest Officer has also rightly relied upon the aforesaid Expert Committee Report to assert that Amrit Mahal Kavals are forest lands and must be protected as such. Surely this decision would have been taken only with the concurrence of the Karnataka Forest Department and also with the Secretary, (Forests), State of Karnataka. The current exercise of defending the diversion of Challakere Amrit Mahal Kavals is, therefore, indisputably expedient and fraught with highly questionable inconsistency.

The Applicants submit, therefore, that on the basis of such evidence, the Amrit Mahal Kaval of Challakere Taluk in Chitradurga district of Karnataka are forests in the letter and spirit of the law and also per the directions of the Honourable Supreme Court of India. The Applicants submit that this factual and legal proposition should be explicitly recognised by the Expert Committee and the Honourable National Green Tribunal. Such a finding would resonate well with established scientific and academic scholarship that indicates that “[i]nstead of presuming that one can design an optimal system in advance and then make it work, we must think about ways to analyse the structure of common-pool resources, how these change over time, and adopt a multi-level, experimental approach rather than a top-down approach to the design of effective institutions...For large countries, however, rules that are appropriate in one region are rarely effective in another....Instead of developing models that generate optimal outcomes, we need to understand what level of redundancy, overlap and autonomy help to adapt rules that work for particular resources under

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<sup>35</sup> Letter dated 18<sup>th</sup> September 2008 (No. A7:Darkasth:Land:CR-38/2008-09) of Deputy Conservator of Forests, Chikmagalur Division, Chikmagalur to the Deputy Commissioner, Chikmagalur District.

specific social-economic conditions. And, then, we need to focus on how to enhance the robustness of these institutions to diverse disturbances that will 'hit' them over time.”<sup>36</sup> The decision of the Government of Karnataka in alienating the Amrit Mahal Kavals of Challakere in Chitradurga District without prior permission of Central Government is therefore in gross violation of the Forest (Conservation) Act, 1980, in particular Section 2, and directions of the Supreme Court in *T. N. Godavarman Thirumalpad v. Union of India and others*.<sup>37</sup> In addition, the fact that Biodiversity Management Committees and Forest Rights Committees have not been consulted in decision-making relating to the diversion of the Kavals is violative of the Biological Diversity Act, 2002 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The fact that the diversion has taken place without any consultation with the District Planning Committee, makes the decision violative of the Constitutional 73<sup>rd</sup> Amendment (Panchayat Raj) Act and Constitutional 74<sup>th</sup> Amendment (Nagarpalika) Act.



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<sup>36</sup> Elinor Ostrom, *Institutions and the Environment*, Institute of Economic Affairs, 2008.

<sup>37</sup> *Supra* note 27

## SECTION VIII: DIVERSION OF CHALLAKERE'S KAVALS IN COMPREHENSIVE VIOLATION OF VARIOUS ENVIRONMENTAL LAWS

Various environmental laws, norms, procedures and guidelines have been comprehensively violated by the project proponents and the State of Karnataka in illegally accessing and building over Challakere's Amrit Mahal Kavals. The Applicants submit here a brief analysis of the egregious violations of certain major laws protecting environment, wildlife, biodiversity, forests and forest rights.

### Violation of Wildlife (Protection) Act, 1972

The evidence produced in this submission reveals that the Challakere grassland ecosystems are habitat to various species of flora and fauna, especially Schedule I species, which are protected under the Wildlife (Protection) Act, 1972, and other connected legislations, conventions, and treaties. The applicants specifically draw the attention of the Expert Committee appointed by the Hon'ble Tribunal to specific violations undertaken by some of the Respondents through the diversion of these grasslands:

- a) The admitted act of deploying bombs in the Challakere region by Defense Research & Development Organisation (DRDO) without clearance of any sort from any civilian authorities and in violation of laws governing defence forces and defence related agencies.
- b) The admitted act of developing walls, barbed wire fences, roads, structures, etc. by several of the beneficiaries of this wrongful diversion of grassland ecosystems, in particular Defence Research & Development Organisation, Indian Institute of Science, Indian Space Research Organisation, Bhabha Atomic Research Centre, Karnataka Housing Board, amongst others.

#### a) Illegal deployment of bombs in Challakere grasslands by DRDO:

In an article entitled '*New DRDO test range becomes operational*', The Hindu Business Line,<sup>38</sup> dated December 17<sup>th</sup> 2010, reports as follows:

"Describing it as a proud moment for the scientific community, a DRDO release citing the organisation's Chief Controller R&D (Aerospace), Dr Prahlada, said, "The Challakere DRDO Test Range became operational with the first ever bomb testing experiments of LCA, though total infrastructure and other logistic facilities are yet to be completed; financial support in full form is also awaited." The successful tests signified a major milestone in aeronautical developments in the country, he said."

The Applicants wish to bring to the attention of the Expert Committee the following provisions of the Wildlife (Protection) Act, 1972:

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<sup>38</sup> "*New DRDO Test Range Becomes Operational*", The Hindu Business Line, December 17<sup>th</sup> 2010; accessible at: <http://www.thehindubusinessline.com/todays-paper/tp-others/tp-states/new-drdo-test-range-becomes-operational/article1029006.ece> last accessed on 21st June 2013. A related article entitled "*Tejas Flight Trials Activate Chitradurga Air-to-Ground Range*" published in Frontier India, is accessible at : <http://frontierindia.net/tejas-flight-trials-activate-chitradurga-air-to-ground-range#axzz2XDEm1He> ; last accessed on 24<sup>th</sup> June 2013

- “Section 2 (15) “habitat” includes land, water, or vegetation which is the natural home of any wild animal;
- Section 2 (16) “Hunting,” with its grammatical variations and cognate expressions, includes-
  1. Killing or poisoning of any wild or captive animal and every attempt to do so;
  2. Capturing, **coursing**, snaring, **trapping**, **driving** or baiting any wild or captive animal **and every attempt to do so**;
  3. **Injuring or destroying** or taking **any part of the body of any such animal** or, in the case of wild birds or reptiles, **damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles**;
- Section 2 (35) “weapon” includes **ammunition**, bows and arrows, **explosives, firearms**, hooks, knives, nets, poison, snares, traps, **and any instrument or apparatus capable of anaesthetizing, decoying, destroying, injuring or killing an animal;**”

Taking into consideration the above definitions, the Applicants submit that the act of DRDO to deploy bombs in the Challakere Amrit Mahal Kaval grassland ecosystems, which is a habitat to various Schedule I species of the Wildlife (Protection) Act, 1972, clearly constitutes an egregious violation of the said law per Section 9, 17(a), 29 and 51 (1) (as applicable in Karnataka), which are as follows:

“9. Prohibition of hunting.- No person shall hunt any wild animal specified in Schedule I, II, III and IV except as provided under section 11 and section 12.

17A. Prohibition of picking, uprooting, etc. of specified plant.- Save as otherwise provided in this Chapter, no person shall-

(a) willfully pick, uproot, damage, destroy, acquire or collect any specified plant from any forest land and any area specified, by notification, by the Central Government;

29. Destruction, etc., in a sanctuary prohibited without permit.-No person shall destroy, exploit or remove any wild life including forest produce from a sanctuary **or destroy or damage or divert the habitat of any wild animal by an act whatsoever** or divert, stop or enhance the flow of water into or outside the sanctuary except under and in accordance with a permit granted by the Chief Wild Life Warden and no such permit shall be granted unless the State Government, being satisfied in consultation with the Board that such removal of wildlife from the sanctuary or the change in the flow of water into or outside the sanctuary is necessary for the improvement and better management of wild life therein, authorises the issue of such permit.”  
[Emphasis supplied]

“51. Penalties. (1) Any person who contravenes any provision of this Act (except Chapter VA and section 38J) or any rule or rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be

punishable with imprisonment for a term which may extend to three years, or with fine which may extend to twenty five thousand rupees, or with both.

Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in, or, altering the boundaries of] a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to six years and also with fine which shall not be less than ten thousand rupees.

Provided further that in the case of a second or subsequent offence of the nature mentioned in the foregoing proviso, the term of imprisonment may extend to six years and shall not be less than two years and the amount of the fine shall not be less than ten thousand rupees.”

The Applicants submit that the actions of DRDO constitutes a serious violation of the Wildlife Act, 1972 particularly when reviewed in the context of the definition of hunting as provided in Section 2(16) (b) and other relevant provisions of the law. It is a matter of deep concern that despite this illegal and criminal violation being triumphantly broadcast by DRDO through public releases, no action has been initiated by the Forest Dept. to the best knowledge of the Applicants.

#### b) Illegal construction of walls and other structures by various Project Proponents:

The Applicants submit that the action of the Respondents in building impenetrable high security double walls (especially DRDO) integrated with the service road, barbed wire fencing, etc., amounts to fragmenting and blocking the free range of the grassland ecosystem and has resulted in ‘driving’ or ‘coursing’ of wildlife and their consequent diversion from their natural course. This has forced wild animals to follow the path along the obstructions raised by the Respondents and has possibly resulted in fragmenting wildlife populations. Such a situation has also probably caused serious and irreversible impact on the social and foraging behaviour, and breeding cycles of wild fauna. Imposing such impediments in the movement and behaviour of wild animals, particularly in their natural habitats, is expressly prohibited by Section 2 (16) (b), as stated above. When read with Section 9 and 51(1) of the Wildlife (Protection) Act, 1972, as well as various guidelines given out from time to time by scientific bodies and regulatory authorities with the intent of according protection to and conservation of Indian wildlife, and particularly keeping in view the binding directions of the Honourable Supreme Court<sup>39</sup> on such matters, the actions of the project proponents in having illegally raised such massive civil engineering structures in forests, which is also habitat to critically endangered species, amounts not merely as egregious violation of law and appropriate guidelines, but also are actions undertaken in contempt of Supreme Court's directions.

**Violation of the Forest Rights Act, 2006:** The Applicants submit that the Parliament of India in its wisdom, and in response to widespread and historical demand for setting right grave injustices that were caused to Scheduled Tribes and forest dwelling and dependent communities, enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, also known as Forest Rights Act, 2006. It is acknowledged in the Preamble of this Act that:

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<sup>39</sup> For example, see *Sansar Chand v State of Rajasthan* Criminal Appeal No. 2024 of 2010; Orders specific to the importance of wildlife conservation issues in *T. N. Godavarman Thirumalpad v. Union of India and others* in W.P. (C) No. 202/95

the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of state forests during the colonial period as well as in independent India, resulting in historical injustices to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.

‘Forest land’ is defined in this Act as:

land of any description falling within any forest area and includes unclassified forests, un demarcated forests, existing or deemed forests, protected forests, reserved forests, sanctuaries and National Parks.

‘Community forest resource’ is defined as:

customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including the reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community have traditional access.

Section 3 of the Act elucidates ‘forest rights’ as including:

other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities.

In Chapter III of the Act, which deals with Recognition, Restoration and Vesting of Forest Rights and Related Matters, Section 4 (5) provides that:

“no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.”

Bestowing such rights, the Act casts a variety of responsibilities on the State, especially in Chapter IV, where a detailed set of obligatory functions of the State are listed, and where also it is categorically asserted that vesting forest rights has to be the foremost priority action that the State must undertake, and that this action must precede any alienation of forests, or forest rights.

The Applicants submit that it is an incontrovertible fact that none of the provisions of this law have at all been complied with by the State of Karnataka, in particular the Karnataka State Forest Dept., the Secretary (Forests) and the Deputy Commissioner, Chitradurga District, who are the directly designated officials to undertake the tasks mandated in the Forest Rights Act, 2006. It is an indisputable fact also that not a single Forest Rights Committee has been constituted in the impacted area prior to alienation of the forest rights and forest land, as is required per this law. The Applicants submit that the actions of the State in diverting the Amrit Mahal Kavals constitute a fundamental abrogation of the letter and spirit of a landmark legislation, the clear and specific intent of which is



to set right historical injustices caused due to decades of neglect of the due rights (relating to forests and forest resources) of Scheduled Tribes and other traditional forest dwellers. Further, such illegal decisions demonstrate the Executive's shocking contempt for the power and intent of the explicit considerations spelled out by the Legislature.

About such actions of the Executive, the Honourable Supreme Court in *Orissa Mining Corporation v. Ministry of Environment & Forests & Others*<sup>40</sup> has observed with considerable trepidation that:

(m)any of the STs and other TFDs are totally unaware of their rights. They also experience lot of difficulties in obtaining effective access to justice because of their distinctive culture and limited contact to mainstream society. Many a times, they do not have the financial resources to engage in any legal actions against development projects undertaken in their abode or in the forest in which they stay. They have a vital role to play in the environmental management and development because of their knowledge and traditional practices. State has got a duty to recognise and support their identity, culture and interest so that they can effectively participate in achieving sustainable development.

In this ruling the Honourable Court has recognised that the Forest Rights Act, 2006 acknowledges that the vesting of rights:

of the forest dwelling STs and other TFDs include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests for ensuring livelihood and food security of the forest dwelling STs and other TFDs.

The Court has also observed that:

(o)f late, we have realised that the forests are the best chance to survive if communities participate in their conservation and regeneration measures.

Based on such interpretations, the Court has held that the:

Legislative intention is, therefore, clear that the Act intends to protect custom, usage, forms, practices and ceremonies which are appropriate to the traditional practices of forest dwellers.

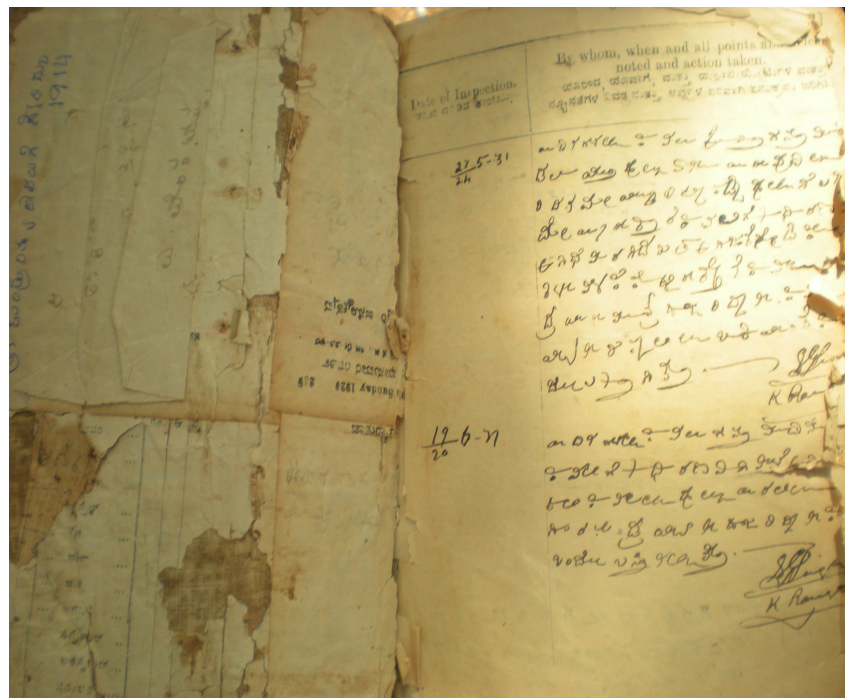
Most critically, the Court has acknowledged the supremacy of this law in recognising the relationship and rights of communities with forests over any other law.

Taking the above facts into consideration, it is evident that the Act of the Deputy Commissioner of Chitradurga District, on behalf of the State of Karnataka, to alienate the Amrit Mahal Kavals of Challakere, Chitradurga District, is in clear violation of the provisions, purport and spirit of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

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<sup>40</sup> Orissa Mining Corporation v. Ministry of Environment & Forests & Others, Writ Petition (Civil) No. 180 Of 2011

**Violations of Biological Diversity Act, 2002:** The Applicants submit that the diversions of the biodiversity-rich Amrit Mahal Kaval grassland ecosystem of Challakere are in clear violation of the Biological Diversity Act, 2002. This law was enacted in conformance with India's commitment to the United Nations Convention on Biological Diversity, signed at Rio de Janeiro, on 5<sup>th</sup> June 1992 and declares its main objective as "conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of utilization of genetic resources." The State of Karnataka and the Government of India are bound by this law to ensure that their actions do not compromise any of the proclaimed objectives of the law. The available evidence seems to suggest that the Biological Diversity Act, 2002 and the authoritative institutional framework created by the enactment has been entirely ignored or side-lined in the decision-making process relating to the lands in question. The Applicants submit that the actions of the Deputy Commissioner of Chitradurga District in diverting the Amrit Mahal Kavals of Challakere Taluk to various industrial, institutional, commercial and infrastructure developments are clearly in violation of the mandate and goals of the Biological Diversity Act, 2002 as they fail to even attempt to comprehend the rich and varied forms of biological diversity of the grasslands, and also resort to false claims that these biodiversity-rich natural ecosystems are mere waste lands.



*Figure 10: The diary maintained by the Kavalgaaras of Challakere indicate several generations of community dependence on the grassland ecosystems*

The applicants submit that the Biological Diversity Act, 2002 explicitly and exhaustively determines the duties of the Central and State Governments at Chapter IX. Specifically:

- Section 36(1) mandates that the "Central Government shall develop national strategies, plans, programmes for the conservation and promotion of sustainable use

of biological diversity including measures for identification and monitoring of areas rich in biological resources...”;

- Section 36(2) the mandate is that the “Central Government has reason to believe that any area rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect, it shall issue directives to the concerned State Government to take immediate ameliorative measures, offering such State Government any technical and other assistance that is possible to be provided or needed.”;
- Section 36 (3) it states that “The Central Government shall, as far as practicable wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.”;
- Section 36(4) (i) mandates that the Central Government shall undertake measures “wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimize such effects and where appropriate provide for public participation in such assessment.”

In addition,

- Section 37(1) provides that “the State Government may, from time to time in consultation with the local bodies, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act.”

Furthermore,

- Section 38 mandates that “Without prejudice to the provisions of any other law for the time being in force, the Central Government, in consultation with the concerned State Government, may from time to time notify any species which is on the verge of extinction or likely to become extinct in the near future as a threatened species and prohibit or regulate collection thereof for any purpose and take appropriate steps to rehabilitate and preserve those species.”

The applicants have provided extensive evidence in their applications before the Tribunal, and also in this report, demonstrating the rich, unique and also endemic biological diversity of the grassland ecosystems of Challakere Taluk, Chitradurga District. It is to be noted that a large part of such evidence has been present in public domain and anyone, and any authority in particular, concerned with the conservation of such sensitive ecosystems, could easily have accessed most of this material. Keeping this in view, the Applicants submit that to have overlooked the fact that the Amrit Mahal Kavals were areas of extraordinary biodiversity is not merely an inappropriate decision, but also a deliberate one, that has been employed to defend a wrongful decision of diverting forests (and sensitive ecological areas) to non-forest (and environmentally damaging) purposes.

The State Government’s disregard for compliance with the provisions of the Biological Diversity Act, 2002 also continues in the violation of Section 41, as the Karnataka Biodiversity Board has grossly failed in constituting the mandatory Biodiversity Management Committees (BMCs) in Challakere Taluk. Such failure has incapacitated the local communities in exercising their due rights in conserving the biological resources of the Challakere grasslands and also in protecting their

traditional knowledge and livelihoods relating to the local biological resources. Were the BMCs established as required, then the communities would have been able to advance a strong case for the protection, conservation, and wise use of these biodiversity rich areas which are critical to the sustenance of their traditional livelihoods, guaranteed, as it is, in Section 41(1) of the Biological Diversity Act, 2002, which reads as follows:

Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity.

Such neglect has also seriously compromised the ability of the local communities in realising their statutorily guaranteed right to be involved in decision-making as provided for in Section 41(2), which reads as follows:

The National Biodiversity Authority and the State Biodiversity Boards shall consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee.

Clearly, therefore, the failure to constitute the Biodiversity Management Committees has denied the local communities their Constitutionally guaranteed right to participate in the decision-making process that threatens irreversible alienation of a critical and unique ecological landscape, habitat and a biodiversity rich area which is intricately linked to the sustenance of their life, livelihoods and cultural freedoms.

**Non-compliance with the provisions of Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981:** It is admitted in the submissions made by the Karnataka State Pollution Control Board in response to the aforesaid Applications before the Honourable Tribunal, that all the projects proposed in the aforesaid Amrit Mahal Kavals of Challakere Taluk are in comprehensive violation of the applicable Notifications, Rules and other appropriate provisions of the Environment (Protection) Act, 1986, Environment Impact Assessment Notification, 2006, Water (Prevention and Control of Pollution) Act, 1974, and Air (Prevention and control of Pollution) Act, 1981. In addition, it has also been reported by the Board that all the proposed investors have commenced work without any statutory clearance.



*Figure 11: The barbed wire fence built by BARC blocks traditional village paths in Challakere, forcing villagers to take detours of several kilometres*

All projects proposed in Challakere are required to secure appropriate environmental clearances per the applicable laws. All project proponents have admittedly violated the environmental laws and

norms of the country, as is evident in their submissions before the Honourable Tribunal. Almost all of the project proponents have also admitted to constructing various massive structures in blatant violation of the law and that they have continued these activities even after receiving notices from Karnataka State Pollution Control Board, in its regulatory capacity, warning against their ongoing criminal actions. Despite such egregious act of violation of environmental and pollution control laws and norms, it is most disturbing that regulatory agencies have not proceeded to prosecute the violators even to this date, as is required per law.

**Project construction undertaken in explicit violation of Circular issued per the EIA Notification, 2006:** An Office Memorandum dated 19<sup>th</sup> August 2010 [No. J-11013/41/2006-IA.II(I)] issued by Dr. S. K. Agarwal, Director, Ministry of Environment and Forests, which is as follows:

Instances have come to the notice of this Ministry where the project proponents have undertaken construction activities relating to the project at site without obtaining the requisite prior environmental clearance as is mandated under the EIA Notification, 2006. It is to reiterate that the EIA Notification, 2006 mandates prior environment clearance to be obtained in respect of all the activities listed therein following the prescribed procedure. No activity relating to any project covered under this Notification including civil construction, can be undertaken at site without obtaining prior environmental clearance except fencing of the site to protect it from getting encroached and construction of temporary shelter(s) for the guard(s).

All the project proponent may note that any contravention of the provisions of the EIA Notification amounts to violation of the Environment (Protection) Act 1986 and



*Figure 12: The 30 kms. long double containment wall built by DRDO is illegal and has fragmented the grassland ecosystem*

would attract penal action under the provisions thereof. The project proponent may also note that in case of any project where TORs have been prescribed for undertaking detailed EIA study and where construction activities relating to the project have been initiated by them, the TORs so prescribed may be suspended/ withdrawn in addition to initiating penal action under the provisions of the EP Act, 1986.

The proponents of the proposed projects, in defence of their investments, have provided a variety of evidence claiming that massive public investments have been made in promoting these projects in the national interest. In so doing, it appears to the Applicants, that they are promoting a claim that conservation of rare and critically

endangered species, of sensitive ecosystems and of associated traditional knowledge and livelihoods, is not necessarily in the interest of the nation. The question that arises is whether such a situation has resulted due to the failure of the Union Ministry of Environment and Forests and the environmental regulatory agencies of Karnataka State in confronting such egregious violations. While no individual environmental clearances have been obtained in the instant case, it is instructive to briefly consider the grounds on which clearances have been quashed in the past by the National Environment Appellate Authority (the precursor to the Honourable National Green Tribunal) and other authoritative institutional fora. They include: 'crucial impacts' were not taken into account,<sup>41</sup> public consultation procedure was improperly followed,<sup>42</sup> environmental impact was too great,<sup>43</sup> information submitted was false,<sup>44</sup> decision-granting clearance was not reasoned,<sup>45</sup> and data provided was inadequate to judge the environmental impact.<sup>46</sup> Clearly, the self-evident truth of 'prevention is better than cure' has been entirely lost by the decision-makers in the instant case. Further, the Respondents responsible for the impugned decision have not considered, even in a basic elementary fashion, the cumulative environmental impact of all these proposed projects in the ecologically-fragile, highly threatened, and biodiversity-rich Amrit Mahal Kavals of Challakere.

**Need for cumulative Environment Impact Assessment sidestepped:** In *Ossie Fernandes v. The Ministry of Environment and Forests*, the Honourable National Green Tribunal has explicitly stated that "[i]t is always desirable that a cumulative impact study is conducted invariably in all the cases where more than one project of similar nature or different nature are involved. The cumulative effect of any discharge from the industry/project would definitely have an adverse effect on the carrying capacity of environment and ecology..... All the more, it is essential to have cumulative effect study of the projects to avoid any danger to human life..."<sup>47</sup> Further, in *Vimal Bhai v. Ministry of Environment and Forests*, the Honourable National Green Tribunal explicitly pointed out that cumulative impact assessment was essential to satisfy the requirements of the Precautionary Principle and Principle of Sustainable Development, and that this would require integrating "the physical, biological and social impacts in making comprehensive cumulative impact assessment" to "avoid any unforeseen environmental and ecological threat in the study area".<sup>48</sup> In any case, considering that the project proponents have comprehensively violated all the provisions of the applicable environmental regulation laws, it would be befitting and statutorily compulsory on the part of the Board, and also the Union Ministry of Environment and Forests, to seriously consider

<sup>41</sup> *Vimal Bhai v. Union of India*, Appeal Nos. 8, 9 and 10 of 2007, National Environment Appellate Authority, Order dated 15 September 2010; *Pratap Singh Thakur v. MoEF*, Appeal No. 34 of 2009, National Environment Appellate Authority, Order dated 30 August 2010.

<sup>42</sup> *Prafulla Samantra v. Union of India*, Appeal No. 18 of 2009, National Environmental Appellate Authority, Order dated 15 September 2010.

<sup>43</sup> *Gomantak Shetkari Sangathana v. Union of India*, Appeal No. 30 of 2009, National Environmental Appellate Authority, Order dated 15 July 2010.

<sup>44</sup> *T. Mohana Rao v. Union of India*, Appeal Nos. 1-6 of 2010, National Environmental Appellate Authority, Order dated 14 July 2010.

<sup>45</sup> *Utkarsh Mandal v. Union of India*, W.P. No. 9340/2009 & C.M. Appeal Nos. 7127/09, 12496/2009, Decision dated 26 November 2009.

<sup>46</sup> *Balachandra Bhikaji Nalwade v. Union of India*, W.P. No. 388/2009, Decision dated 18 July 2009.

<sup>47</sup> *Ossie Fernandes v. The Ministry of Environment and Forests*, Appeal No. 12/2011, National Green Tribunal, Principal Bench (New Delhi), Judgment dated 30<sup>th</sup> May, 2012.

<sup>48</sup> *Vimal Bhai v. The Ministry of Environment and Forests*, Review Application No. 1/2012 in Appeal No. 5/2011, National Green Tribunal, Principal Bench (New Delhi), Order dated 8 February, 2012.



initiating criminal proceedings against the violators as is required by the aforementioned legislations, particularly the Environment (Protection) Act, 1986.

**Specious exemption by MoEF for mandatory compliance with EIA Notification, 2006 by Sagitaur:** In particular regard to the case of M/s. Sagitaur Ventures Pvt. Ltd., the Applicants submit that the discretion employed by Dr. S. K. Agarwal, Director, Ministry of Environment and Forests, *vide* his letter dated 13<sup>th</sup> May 2011 [No. J-11013/41/2006-IA.II (I)], wherein it is “ **clarified that the Solar PV Power Project are not covered under the ambit of EIA Notification, 2006 and no environmental clearance is required for such projects**”, (emphasis supplied) is clearly devoid of any rational basis, is against the letter and spirit of the Environment (Protection) Act, 1986 in general and the Environment Impact Assessment Notification, 2006 in particular. The inappropriate nature of such executive discretion being employed against the letter and spirit of the Act will be brought to the attention of the Honourable Tribunal during the legal proceedings for appropriate action.

**Highly hazardous projects and operations promoted without any environmental and security review:** The Applicants also wish to submit that the projects proposed in Challakere's Amrit Mahal Kaval grassland ecosystems are of a highly hazardous nature. The fact that none of the project proponents has even bordered to comply with the specific rules and notifications in this regard reveals the shocking dismissal of the serious risks they are putting nature and people to. In particular the Applicants submit that the project proponents' actions are in gross violation of the Hazardous Waste (Management and Handling and Trans Boundary Movement) Rules, 2008 as amended by (Amendment) Rules, 2010.

This is particularly the case in the proposal to site a nuclear enrichment facility by Bhabha Atomic Research Centre which is in gross violation of the Atomic Energy Act, 1962, the Rules governing the Atomic Energy Regulatory Board, Atomic Energy (Radiation Protection) Rules, 2004, Atomic Energy (Factories) Rules, 1996, Atomic Energy (Safe disposal of Radioactive Wastes) Rules, 1997, Atomic Energy (Working in the Mines, minerals and Handling of Prescribed Substances) Rules, 1984 as also the Atomic Energy Regulatory Board Safety Manual, 2006.

It is also submitted by the Applicants that the Aeronautical Developmental Establishment, a division of the Defence Research & Development Organisation, has admittedly carried out various bombing sorties at the Challakere grasslands even when there is no clearance from appropriate regulatory and statutory authorities for such highly hazardous and dangerous operations.

It is evident that all ongoing activities of project proponents in the ecologically sensitive Challakere grassland ecosystems are in clear violation of the Environment (Protection) Act 1986 and related laws, and the Ministry of Environment and Forests, Karnataka Pollution Control Board, Karnataka Dept. of Forests, Ecology and Environment and all other regulatory authorities are duty bound to criminally prosecute the violators and take other appropriate action in accordance with the applicable laws.

## SECTION IX: VIOLATION OF FUNDAMENTAL PRINCIPLES OF INDIAN JURISPRUDENCE

In this section, the Applicants elucidate how the illegal diversion of Challakere's Amrit Mahal Kavals and consequent illegal development of projects constitute serious violations of various principles of Indian jurisprudence.

**Violation of the Doctrine of Public Trust and the Principle of Sustainable Development:** The Constitution of India directs the state towards a policy of securing “that the ownership and control of the material resources of the community are so distributed as best to subserve the common good”.<sup>49</sup> A spirited defence of this constitutional recognition of the right of the community over the preservation of its resources was made in the landmark judgement of the Honourable Supreme Court of India in *M. C. Mehta v Kamal Nath*.<sup>50</sup> With this order the Court enshrined the “Public Trust Doctrine” as an essential principle of Indian jurisprudence and decision making by recognising that:

“certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.”

It is vitally important to note that the definition of resources which fall under this doctrine was given a wide and expansive scope, inclusive of “all ecosystems operating in our natural resources.” The Amrit Mahal Kaval grasslands of Challakere, must, by virtue of this Doctrine, be protected by the Government for the benefit of the impacted villages of Challakere, instead of being partitioned and forfeited to private commercial companies like M/s Sagitaur Ventures, or even being parcelled off to various public sector corporations. The diversions constitute a serious violation of the due process of law, and are actions undertaken undemocratically and absolutely irrationally without heed to their irreversible consequences on the public commons and their weakening of the Public Trust Doctrine and the Principle of Sustainable Development.

The invoking of the Public Trust Doctrine in jurisprudence is in affirmation of the duty of the State as custodian in conserving, protecting and ensuring democratic governance of public resources and commons.<sup>51</sup> Joseph L Sax, whose article “*The Public Trust Doctrine in Natural Resource*”<sup>52</sup> is a recognised authority is cited by the Honourable Supreme Court in this judgement to explain the restrictions upon the Government in using its power to determine the use of public commons:

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<sup>49</sup> Article 39(b), Constitution of India

<sup>50</sup> *M.C.Mehta v Kamal Nath Writ Petition (C) No. 182 of 1996*

<sup>51</sup> *Intellectuals Forum, Tirupathi v State of AP & Ors 2006(2) SCJ, 293.*

<sup>52</sup> Joseph L. Sax *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention* MICHIGAN LAW REVIEW 68 (3): 471–566.

first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;  
second, the property may not be sold, even for a fair cash equivalent;  
and third the property must be maintained for particular types of uses.

The Supreme Court also held that “when a State holds a resource which is available for the free use of the general public, *a court will look with considerable scepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties*”.<sup>53</sup> (Emphasis supplied.)

With great wisdom and foresight, the Honourable Court has also discussed the dilemma of preservation of ecology versus the changing needs of society, and has presented the appropriate methodology for adjudicating such disputes:

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. *But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use.* The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use *unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.* (Emphasis supplied.)

Thus, in the absence of specific legislation for conserving grassland ecosystems and permitting their encroachment under exceptional, strictly defined conditions conforming to the Principle of Sustainable Development, the Executive is barred from formulating decisions diverting such public commons and natural resources to any other purpose “**unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources**”. (Emphasis supplied) The Executive is also prohibited from formulating decisions that are in variance to the public trust doctrine which is a safeguard against the violation of the fundamental guarantees enshrined in Article 21 of the Constitution. In addition, the Supreme Court has directed that administrative decisions ought to ensure that they protect the “right to expect certain lands and natural areas to retain their natural characteristics”<sup>54</sup>

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<sup>53</sup> Illinois Central Railroad v. Illinois [146 US 387 : 36 Ed 1018 (1892)]

<sup>54</sup> Th. Majra Singh v Indian Oil Corporation AIR 1999 J&K 81

**Karnataka High Court has barred the diversion of Amrit Mahal Kavals:** The Applicants submit that the Honourable High Court of Karnataka, whilst dealing with the illegal diversion of S. No. 1 of Ramagiri Amrit Mahal Kaval of Gangasamudra village, Holalkere Taluk, Chitradurga District, has held in Writ Petition 17954/1997 (PIL)<sup>55</sup> while interpreting lands “reserved for the purpose of pasturage” that *“whether it is called as Amruth Kaval land or gomal land, it is a reserved land within the meaning of section 71 of the Act read with Rule 97 of the Karnataka Land Revenue Rules. If this is the position, then this land is meant to be preserved for this purpose and not to be diverted for any other purpose.”* (Emphasis supplied) The Honourable Court consequently directed that “respondents are duty bound to act under the Act and Rules and are duty bound to comply with the requirements of the statutory provisions. The respondents are also duty bound to ensure that the lands reserved for such purpose is preserved and protected for the use for which it is reserved and no portion of that land is in any way diverted or illegally encroached upon..”

Subsequent to this order, the Karnataka Law Department issued an opinion dated 14<sup>th</sup> October 2003,<sup>56</sup> wherein it is stated as follows:

Though the Judgment came to be delivered in the case of Sy. No. 1 of Ramagiri Amrut Mahal Kaval (which is a Government land), it is generally applicable to all other similar case. Whether or not the Department of Animal Husbandry is a party in the aforesaid proceedings, the State is bound by the said Judgment, The Respondent-State has been directed to preserve the land, which is admittedly Amruth Mahal Kaval land, as a gomal land, while interpreting Section 71 of the Karnataka Land Revenue Act, 1964, and the Karnataka Land Revenue Rules, 1966. The above Judgment has general applicability involving similar questions of land and it cannot be confined to the lands involved in the said Writ Petition. The above Judgment was rendered in a Public Interest Litigation.

As has been described earlier in this report, it was on the basis of this opinion that the Department of Animal Husbandry and Fisheries of the Government of Karnataka issued a circular dated 28 February 2004 (NO. Pasam Mee 7 AaMaBhu: 2001) on the fundamental applicability of the Karnataka High Court order for all decisions pertaining to Amrit Mahal Kavals, in future, stating as follows:

A question has arisen whether the decision of the Karnataka High Court would be applicable to lands in all Amrit Mahal Kavals. This has been considered in consultation with the Law Department. The Law Department has given its opinion to state that upon analysing the provisions of the Karnataka Land Revenue Rules and Section 71 of the Karnataka Land Revenue Act, the Government is required to protect Amrit Mahal Kavals as Gomala lands. The Karnataka High Court has given its judgment and the Court has specifically directed that Amrit Mahal Kavals must be protected as Gomala lands. This decision is applicable to all Amrit Mahal Kaval lands and not limited to the lands in question in the Writ Petition.

The Court has given the historic decision to decide the dispute in public interest. In this background, in order to protect Amrit Mahal Kavals as Gomala lands from any

<sup>55</sup> Kariyappa & Ors v Tehsildar, Holalkere & Ors Writ Petition 17954 of 1997

<sup>56</sup> Opinion dated 14<sup>th</sup> October 2003, (Order No. AHF 07 A MA BHU 2001) issued by the Karnataka Law Department.

appropriation and occupation, necessary action must be taken with the cooperation of Revenue and Police Departments and the appropriation or occupation vacated. All agencies of the State are hereby requested to cooperate with the Government to protect Amrit Mahal Kaval lands as Gomala lands.

On the fundamental importance of complying with Circulars issued by the Government from time to time, and on how they must guide administrative actions, the Honourable High Court of Karnataka has also held in *Ramesh v. State of Karnataka*<sup>57</sup> that:

“16. It is well settled that a circular or notification cannot be inconsistent with the main Act or Rules, but at the same time it can supplement. Once the power has been given to the Deputy Commissioner to pass the order, any circular issued by the Government will amount to an order issued in pursuance of the provisions of the Act. In the circumstances, the circular cannot be said to be inconsistent with the main Act as this circular will be equivalent to Government order as contemplated under Karnataka Land Revenue Act.”

Clearly, therefore, the decision to divert Amrit Mahal Kavals in Challakere is in direct contempt of the directions of the Honourable High Court of Karnataka and the direction of the Honourable Supreme Court in the *M. C. Mehta* case.<sup>58</sup>

#### **Eco-centricism must prevail over Anthropocentrism:**

The Applicants wish to submit that the Amrit Mahal Kavals of Challakere are undeniably habitat of various highly threatened and critically endangered species. Consequently, the decision of the Honourable Supreme Court in the *Centre for Environment Law, WWF-I v. Union of India & Ors.*<sup>59</sup> is fully applicable and binding to the present case. In this ruling the Court has articulated a concern that:

“(s)ustainable development... clearly postulates an anthropocentric bias, least concerned with the rights of other species which live on this earth... Eco-centricism is nature-centered, where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest.”

On this basis, the Honourable Court has held that:

“our approach should be eco-centric and not anthropocentric and we must apply the ‘species best interest standard’.”

In this ruling, the Court has also highlighted that:

“Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a species becoming extinct, conservation and protection of environment is an inseparable part to right to life.”

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<sup>57</sup> D.C. Ramesh And Ors. v. State Of Karnataka ILR 2003 KAR 3789

<sup>58</sup> *Supra* note 50

<sup>59</sup> *Supra* note 16

With particular regard to the role of the State *vis-a-vis* environmental conservation, the Honourable Court has once again reminded that the:

State, as a custodian of the natural resources, has a duty to maintain them, not merely for the benefit of the public, but for the best interest of flora and fauna, wildlife and so on. The doctrine of 'public trust' has to be addressed in that perspective.

On the stewardship role of humans, the Honourable Supreme Court has held that:

(w)e, as human beings, have a duty to prevent the species from going extinct and have to advocate for an effective species protection regimes. NWAP 2002-2016<sup>60</sup> and the Centrally Sponsored Scheme 2009 clearly indicate that there are many animal species close to extinction and some of the other species have already disappeared from this earth.

Expressing its serious concerns over the low importance accorded by the State to conservation of highly threatened and endangered species, and their habitats, the Court has held that:

(n)o species can survive on the brink of extinction indefinitely and the probabilities associated with a critically endangered species make their extinction a matter of time...Eco-system approach to protecting endangered species emphasises on recovery, and compliment and support eco-system based conservation approach.

On the basis of such nuanced interpretations of the inter-dependence of life on earth, and also of principles of science and law, the Honourable Supreme Court of India has directed as follows:

"63. We are also inclined to highlight the necessity of an exclusive parliamentary legislation for the preservation and protection of endangered species so as to carry out the recovery programmes before many of the species become extinct and to give the following directions:

(a) NWAP (2002-2016) has already identified species like the Great Indian Bustard, Bengal Florican, Dugong, the Manipur Brow Antlered Deer, over and above Asiatic Lion and Wild Buffalo as endangered species and hence we are, therefore, inclined to give a direction to the Government of India and the MoEF to take urgent steps for the preservation of those endangered species as well as to initiate recovery programmes.

(b) **The Government of India and the MoEF are directed to identify, as already highlighted by NWAP, all endangered species of flora and fauna, study their needs and survey their environs and habitats to establish the current level of security and the nature of threats.** They should also conduct periodic reviews of flora and fauna species status, and correlate the same with the IUCN Red Data List every three years.

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<sup>60</sup>*Supra* note 27



(c) Courts and environmentalists should pay more attention for implementing the recovery programmes and the same be carried out with imagination and commitment.”(Emphasis supplied)

The Challakere grassland ecosystems are a habitat for a variety of highly threatened and critically endangered species as has been highlighted in this report. Besides, there is rapid deterioration in the quality and extent of grassland ecosystems which are commonly treated, including by Forest Departments, as 'degraded' lands. In light of this situation, the diversion of these Challakere Kavals is wholly insensitive to the urgent need to protect critically endangered species and also sensitive ecosystems, and are actions that must be comprehensively reviewed in consonance with the decision of the Honourable Supreme Court upholding Ecocentricism over Anthropocentricism. The only right action that the State could now employ would be to abandon the current exercise of diverting these grasslands to a variety of industrial, infrastructure and institutional purposes, and restore them, with due dispatch, to their original state.

#### **Violations of Precautionary and Polluter Pays Principles:**

The Applicants also contend that the actions of the State of Karnataka violate the 'Precautionary Principle' recognised as the law of the land in *Vellore Citizens' Welfare Forum v. Union of India*,<sup>61</sup> where the principle was defined to include:

“(i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.”

In *A.P. Pollution Control Board v. Prof. M.V. Nayudu*,<sup>62</sup> the Supreme Court of India overturned a decision of the Andhra Pradesh High Court ordering the State Pollution Control Board to grant consent to a polluting industry that was to be located in the catchment area of the Himayat Sagar lake in Andhra Pradesh and held that the 'precautionary principle', the 'polluter pays principle', etc. must govern environmental decision-making. The Court held that the burden of proving the absence of injurious effects of the proposed action is firmly placed on project proponents and observed:

[t]he principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake; precautionary duties must not only be triggered by the suspicion of concrete danger but also by (justified) concern or risk potential.

In the case of diversion of Challakere's Amrit Mahal Kavals, the Karnataka Government has formulated its decisions without any adherence to these directions of the Honourable Supreme Court.

#### **Violation of Principle of Prior and Informed Consent:**

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<sup>61</sup> *Vellore Citizens' Welfare Forum v. Union of India* (1996) 5 SCC 647 : JT (1996) 7 SC 375)

<sup>62</sup> *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 1 S.C.R. 235

All decisions diverting the Challakere grassland ecosystems are also in comprehensive violation of the principle of “prior and informed consent”. In *S. Nandakumar v. the Secretary to the Government of Tamil Nadu Department of Environment and Forests*,<sup>63</sup> the Madras High Court, while hearing a petition challenging the decision taken by the Government of Tamil Nadu to allot 70 acres of land for a solid waste management plant in Kuthambakkam Village in the District of Thiruvallur, points out that:

“public hearing occupies a pivotal position in the matter of environmental impact assessment” and that “the statutory authorities are expected to conduct the hearing by giving reasonable opportunity to all the local affected persons and others who have interest in the particular project or activity.”

In the present instance, many of the residents of the affected villages have negligible information that the Amrit Mahal Kavals that they fundamentally depend on to sustain their livelihoods are being diverted for defence, industrial, research, commercial and industrial projects. Their right as a community to control the fate of their livelihoods and common grazing lands has been denied to them.

#### **Violation of Principle of Intergenerational Equity:**

The Applicants submit that the rights of future generations have been violated by the spate of decisions taken to divert the ecologically sensitive Amrit Mahal Kaval grasslands in Challakere. The Honourable Supreme Court has incorporated the Principle of Intergenerational Equity into Indian legal jurisprudence in the case of *A. P. Pollution Control Board v. Prof. M. V. Nayudu and Ors.*<sup>64</sup> where it has been held as hereunder:

“The principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

Principle 1- Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations.

Principle 2- The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.”

The Applicants submit that the diversion of the Challakere Amrit Mahal Kavals will devastate the lives and livelihoods of the residents of the affected villages and also of generations to come. The impacts will also adversely affect their cultural rights and traditional knowledge associated with local

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<sup>63</sup> *S. Nandakumar v. the Secretary to the Government of Tamil Nadu Department of Environment and Forests* 1999 (2) SCC 718

<sup>64</sup> *Supra* note 62

biological resources. All these adverse and unmitigated impacts have profound consequences for the environmental, cultural and human rights of present and future generations in India and elsewhere.

## **SECTION X: CHALLAKERE'S KAVAL DIVERSION AGAINST PUBLIC POLICY**

### **Livelihoods associated with Animal Husbandry and Protection of Livestock Biodiversity:**

The acute neglect of grassland ecosystems and the distress this is causing pastoral livelihoods is a matter of grave concern. Various Government committees have been constituted to identify the causative factors and the possible ways to remedy the situation. One of such initiatives is by the Planning Commission which has produced a Report on Fodder and Pasture Management. In the report, the Commission expresses its deep worry over the diversion of grasslands and grazing pastures to other uses and identifies a major cause for this is due to the fact that “(m)ost of the pastures are neither defined nor marked on ground”. As a result these “non-designated grazing lands are gradually being put to other land uses, causing reduction in extent of already fragmented grazing lands”. The Commission reports that “the country’s pastures have reduced from about 70 million ha in 1947 to just about 38 million ha in 1997.” Considering that a “(m)ajor proportion of this loss of pasture lands is from the village common lands” the Commission recommends that there is “an immediate need to map the grazing lands in the country, demarcate these on the ground and initiate policy steps to maintain their land use.”

The emphasis of the Planning Commission on protection of grasslands must be viewed in conjunction with the National Livestock Policy which “aims at increasing livestock productivity and production in a sustainable manner, while protecting the environment, preserving animal-biodiversity, ensuring bio-security and farmers' livelihood.” The Policy highlights the critical importance of protecting indigenous breeds of cattle that have adapted to local agro-biological zones acknowledging that the country “...has rich and diverse genetic resources of livestock in the form of a large number of species, breeds, and strains within a species. India has some of the best breeds of cattle and buffaloes with traits for dairy, draught power and dual purposes, several carpet wool breeds of sheep, highly prolific breeds of goats and adaptive breeds of poultry. These breeds of livestock and poultry are essentially the products of long term natural selection and are better adapted to tropical fodder, environment and diseases, and perform under low and medium inputs. Some of these breeds are suited to particular agro-climatic conditions in the country. Some of these breeds have useful genes for fast growth and prolificacy. Such utility genes and breeds would be identified, conserved and utilized for breeding and research. The focus would be on conservation of indigenous breeds of livestock and poultry.” The Policy also recognises the needs of pastoral communities and guaranteeing that they “shall be supported through creation of facilities along their migratory routes for feeding, breeding, healthcare, housing, and market channels for their produce and animals. Indigenous knowledge of pastoral communities about animal maintenance and breeding would be documented with active involvement of communities, breeders’ associations, Gaushalas and NGOs.”

The Country Report on Animal Genetic Resources of India similarly argues for strong protection of pastoral livelihoods stating that they form an “integral part of agriculture with synergistic relationship”, which makes a substantial contribution to GDP”, and provides “gainful employment, particularly to rural women and youth”. The report also acknowledges the effort of local communities over centuries in developing animal husbandry, indicated in the “(p)resence of mega biodiversity in terms of number of breeds adapted to the specific agro-climatic conditions” and by the “(s)trong traditions in rearing and management of” Animal Genetic Resources. The document also highlights that India's obligations under the Convention on Biological Diversity emphasises

conservation of species, but not sufficiently “domestic animal diversity within a species” and that the “issues specific to domestic animals still remain to be addressed”. The Country Report emphasises that “genetic improvement programmes in cattle need a strategic shift from the current emphasis on introducing exotic breeds to utilization and development of indigenous breeds”

### **Conservation of Grasslands as ecosystems:**

The Planning Commission of India in its report on Grasslands and Deserts has categorically confirmed that they are “the most neglected ecosystems by the Ministry of Environment and Forests which looks after biodiversity conservation of India”. The Report acknowledging that “protection, development and sustainable use of grasslands are very important for the rural economy and livestock” and states that there is “an urgent need for a National Grazing Policy to ensure the sustainable use of grasslands and biodiversity conservation.” Specifically addressing that developmental projects have been a major cause for the devastation of grassland ecosystems, the Report calls for “(n)ecessary modification would be required in the new **EIA guidelines** by including ecologically fragile and environmentally sensitive areas where prior EIAs will have to be made mandatory. Also, presence of representatives from identified institutions and experts should be made mandatory during public hearing whenever an EIA is done in the grassland and desert ecosystems so as to review the identified impacts, prediction and mitigation.” Highlighting that weak appraisal of environmental and social impacts of projects impacting grasslands has resulted in bringing grassland dependent species to the brink of extinction, the Report calls the attention of the Government to consider “bustard species, and Snow Leopard as flagship species of grasslands (hot and cold deserts), there is an urgent need to start multiple-state and multiple departments, centrally-sponsored **Project Bustard** and **Project Snow Leopard**, on the same pattern of Project Tiger and Project Elephant.” To ensure that these sensitive ecosystems get the protection they deserve on a war footing, the Report recommends that the “Ministry of Environment and Forests (MoEF), Government of India should start a division or section to look after the grasslands issues, on the pattern of Wetland Division to be headed by a Joint Secretary.”

The extent to which grasslands have been neglected in India is brought to light by the following excerpt from the report:

“ Grasslands are not managed by the Forest Department whose interest lies mainly in trees, not by the agriculture department who are interested in agriculture crops, nor the veterinary department who are concerned with livestock, but not the grass on which the livestock is dependent. The grasslands are the ‘common’ lands of the community and are the responsibility of none. They are the most productive ecosystems in the subcontinent, but they belong to all, are controlled by none, and they have no godfathers.”

The Report calls the attention of the State and the wide public to the fact that:

“Some of the rarest species of wildlife are found in the grasslands, many of them totally dependent on them. The Bengal Florican, One-horned Rhinoceros, Pygmy Hog, Hispid Hare, Wild Buffalo, Hog Deer, Swamp Deer in terai grassland, the Great Indian Bustard in dry, short grasslands, the Lesser Florican in moonsonal grasslands of western India, and the Nilgiri Tahr in the shola grasslands of the Western Ghats are some examples.”

In unequivocal terms the Report calls for the protection of grassland ecosystems a priori for the following reasons:

“With a livestock population of more than 500 million and growing, the grasslands are under tremendous biotic pressure, mainly grazing and conversion to other uses. Presence of such a huge livestock population and dependence of the rural population on it, proves that protection, restoration and sustainable use of grasslands are important policy and ecological imperatives. Besides, providing habitat, shelter, and food, both to livestock and wildlife, the grasslands also serve important catchment for rivers, streams, reservoirs, dams, check-dams and village ponds. In short, grasslands with forest and other natural vegetative cover greatly help in the water regime and hydrological cycle. Therefore, it is imperative to recognize the ecological, hydrological, economic and sociological role of grasslands as a source of survival for millions of livestock and rural people, as protector of soil and water, of rare wildlife species and biodiversity conservation in general. Grasslands and deserts are the only breeding grounds of a number of avian species, whose nesting time is the monsoon. Due to the presence of crops in the fields, the monsoon is the period most affected by the free-ranging livestock, who have nowhere else to go. This is the time when the grass grows. If grass is over-grazed at this time, it not only prevents fodder production and seed formation, but also nests of ground-living birds are trampled. No grasslands, however resilient, can bear the overuse and abuse that they are subjected to.”

With particular regard to the critical need to immediately conserve the Great Indian Bustard, the Report strongly urges that the Government must “ immediately constitute a Task Force for the purpose of establishing **Project Bustard** on the lines of Project Tiger and Project Elephant”, “ To strictly protect the habitat and all the four species of bustards and their associated species in India” and the only way forward to succeed in such endeavours is “To identify areas which could be declared as bustard sanctuaries, Conservation Reserves or Community Reserves as envisaged in the Wild Life (Protection) Act, 1972 and the declaration of Ecological Sensitive Zones under the Environment (Protection) Act, 1986.”

#### **Grasslands must be protected as though they are forests:**

The National Forestry Commission calls for immediate legal protection to grasslands the lack of which, it states, has made grasslands “the most neglected, abused and least protected ecosystems in India.” It points to the fact that “(m)ost of the States have excluded the grasslands and have not identified them as “deemed forest” by the State Expert Committee’s pursuant to the landmark order dated 12.12.1996 in the Forest Matter (T. N. Godavarman Thriumalpad V. Union of India and others in W.P. (C) No. 202/95).” One of the reasons for this, the Commission states, is that Forest Departments have been “(e)xcluding grasslands and including lands only with tree cover as ‘forest’ is against the letter and spirit of the said order thereby denying the protection under the Forest (Conservation) Act, 1980 (F. C. Act).” The Commission strongly recommends that in “view of the fact that the grasslands have spontaneous natural vegetative growth, these should also be treated as ‘forest land’ for the purposes of the Forest Conservation Act and restrictions on diversion of such lands for non-forest use should be applicable to these critical ecosystems as well.” Acknowledging the cavalier manner in which sensitive grassland ecosystems are diverted, the Commission urges that the “central government should invoke the provisions of the Articles 251 and 254 of the Constitution to direct state governments to instruct Revenue Departments not to divert any grassland identified

in the landscape for bustard/florican protection. Such areas can be declared as community or conservation reserves.”

### **Protecting Critically Endangered species of Grasslands ecosystems:**

The vulnerability of grassland ecosystems to human interference is most visible in the manner in which various flagship faunal species such as the Great Indian Bustard, the Lesser Florican, Snow Leopard, etc. are being pushed to the brink of extinction. Very little, or nothing at all, is known about how this has affected floral species, as hardly any surveys have been undertaken from this perspective in recent decades.

In recent years there has been some movement amongst Government agencies to acknowledge the critical dangers to grassland ecosystems and the species inhabiting these landscapes. This is best exemplified in the Ministry of Environment and Forests Guidelines for the Great Indian Bustard Recovery Programme, issued in conformance with the National Wildlife Action Plan developed under the chairmanship of the Prime Minister of India. Many of the typical challenges are identified and in moving forward progressively, the Guidelines acknowledges that “Great Indian Bustard requires a landscape level conservation policy on government–private mixed ownership land, which involves coordinated efforts from various technocratic and informal (community) institutions. Such a holistic approach is currently absent.” The Guidelines acknowledge that “(i)nterest of local stakeholders on grassland conservation has so far been undermined. Local communities can be involved in an integrated management approach by securing their grassland dependant livelihoods using scientific and traditional knowledge bases.” Taking all this into considerations, the Guidelines, which are binding, demand that for the Great Indian Bustard and such other grassland dependent flora and fauna to have any chance of survival as a species, the only way forward is to ensure “...breeding areas have to be excluded from all kind of human disturbances excepting low intensity traditional pastoralism, that too not during the breeding season.” The Ministry particularly emphasises that conservation efforts must include “...restriction on infrastructural development and land–use diversion (ban on roads, high tension electric poles, intensive agriculture, wind power generators and construction)” and that “(a)ctive protection must be given to these areas by Forest Department staff.”

### **Determining grasslands as Ecologically Sensitive Areas:**

There is no dearth of Government efforts in terms of constitution of Committees, Commissions and Task Forces in identifying the critical importance of conserving grassland ecosystems as biodiversity rich areas, as supporting millions of livelihoods, extending a range of ecological services and advancing food security to the nation. Yet, the Government has done very little, or nothing at all, in ensuring such habitats are protected for posterity.

More than a decade ago, the Ministry of Environment and Forests set up a Committee to identify parameters to designate ecologically sensitive areas in India. This Committed in its findings has rightly reported that the issue of according such protection “has numerous dimensions” and that this makes it difficult to evolve “one comprehensive and omnibus law and related guidelines” that would “cover all aspects and eventualities.” In light of such limitations and also recognising that “ecological sensitivity or fragility is but one of the elements in the broader area of environmental concern” the



Committee made a series of recommendations and developed a framework to aid in the identification of Ecologically Sensitive Areas.

### **Siting of defence and nuclear projects next to each other in serious violation of applicable norms**

Nowhere in the world are facilities for testing weaponised drones allowed to be located next to high risk facility such as a nuclear enrichment plant. Indian standards evolved by the Atomic Energy Regulatory Board clearly define nuclear enrichment facilities as high risk infrastructure whose siting should be sensitively reviewed based on its proximity to defence installations, airports, refineries etc, Yet in what appears to be clearly a ill thought idea the BARC facility is located abutting the DRDOs proposal to site a weaponised drone testing facility. The fact that the DRDO facility also has a full fledged runway for flight movements of defence aircraft heightens the risk to the nuclear plant. The additional fact that drones constitute a nascent technology and are totally under the command and control of remote applications brings in a variety of risk scenarios which have never ever been anticipated anywhere else in the world.

The applicants have compiled abstracts from these policies and it is annexed at **Annexure J**.



## SECTION XI: CONCLUSION

This Report submitted to the Expert Committee constituted by the Honourable National Green Tribunal (Southern Zone, Chennai) highlights how the 2009-2010 Karnataka government diversion of at least 10,000 acres of precious, biodiversity-rich, grassland ecosystems (protected for centuries as Amrit Mahal Kavals) in Challakere Taluk of Chitradurga District constitutes one of the most environmentally and socially destructive governmental decisions in the state of Karnataka in recent times. The impugned diversions have been made in egregious violation of the Environment (Protection) Act, 1986, the Wildlife (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the Biological Diversity Act, 2002, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, various laws and policies relating to land use and land allocations, the directions of the National Green Tribunal and the Honourable High Court of Karnataka directly applicable to this case, various judgments of the Honourable Supreme Court of India, and fundamental principles of environmental jurisprudence including the Public Trust Doctrine, the Precautionary Principle, the Polluter Pays Principle, the Principle of Intergenerational Equity, the Principle of Sustainable Development, the Principle of Prior and Informed Consent, the Principle of Eco-centricity, etc. The full implications of these secretive, hasty, non-participatory and illegality-fraught diversions to a slew of defence, industrial, infrastructure, institutional and commercial projects are just slowly coming to light across India and the world. The deleterious consequences of these diversions - that will be undoubtedly be magnified exponentially if the proposed projects on the diverted lands commence full-scale operations – are already being experienced by the local impacted communities, and the voiceless flora, fauna and bio-geography of the region. In a broader sense, 'green justice' across India, and indeed the globe, stands to lose if the *status quo* is allowed to prevail.

The Amrit Mahal Kavals, since time immemorial, have provided a variety of ecological and livelihoods services to the local communities of this region. Not only do they serve as a grazing ground for cattle, but they also provide material for various local handicrafts, minor forest produce and medicinal plants. The only sure way to conserve the Amrit Mahal cattle - rare heritage of Karnataka - for posterity, especially given the breeds' innate nature to retain its vitality by open grazing, is to protect the Challakere Amrit Mahal Kavals without any further delay. The Kavals are also an integral part of the culture of the local communities and are the backdrop in which a variety of festivals celebrating peoples' animistic beliefs are held. It is because of such social and cultural practices, and the deep tradition of conservation of the Kavals, that the Challakere Amrit Mahal Kavals have remained relatively undisturbed by encroachment or degradation, when compared with Kavals elsewhere in the State. In many ways, such interdependence has strengthened the resiliency of the extant ecosystem services that the Kavals render. The communities in the villages directly impacted by the proposed projects are already experiencing significant economic distress even though they (and their ways of life) have not yet been fully displaced, disturbed or dislocated. The deliberate marginalisation of the Challakere Amrit Mahal Kavals would mean a reduced range of locally managed and used options for poor dependent communities to withstand the often harsh environmental stresses of their ancestral homelands.

The Challakere Amrit Mahal Kavals – one of the last remaining large and contiguous expanse of semi-arid grasslands left undisturbed anywhere in the State of Karnataka - form a critical habitat for a variety of highly threatened and critically endangered species of grassland-dependent fauna

including the Blackbuck and the Great Indian Bustard. These Kavals are undeniably the most appropriate habitat to be conserved if the Great Indian Bustard is to have any chance of survival in this region. Further, recent research has shown that various floral species thought to be extinct are indeed found in Chitradurga and in Challakere. In particular, 2 varieties of *Caralluma* species have been rediscovered in Karnataka in the Challakere grasslands after a period of 80 years. Further, 22 taxa from among 304 red-listed medicinal plants and 84 species of indigenous grass flora are found in Chitradurga. Local communities, in particular the tribes associated with the Amrit Mahal Kaval grassland ecosystems, have extraordinary knowledge on the utility of the plants found in the Kavals, both for human needs and veterinary purposes. The conservation of the Amrit Mahal Kaval in Challakere Taluk of Chitradurga district of Karnataka state as a natural grassland ecosystem is of critical importance to the conservation of endangered species, threatened habitats, and the fast-disappearing wealth of traditional knowledge that is our common heritage. For example, recent research indicates that the Lambani tribal community in Chitradurga district possess a wealth of knowledge about 39 plants from 24 families having 26 different ethno-veterinary uses, which could well prove to be invaluable for future medicinal research.

The entire process of selecting the Amrit Mahal Kavals in Challakere for locating various defence, nuclear, technology, infrastructure, industrial, housing, institutional and commercial ventures is based on a variety of decisions which are markedly *mala fide* and *void ab initio* as they are in patent violation of law, and lack sensitivity and the appropriate rationale to genuinely secure wider public interest. Further, the decisions constitute the unilateral view of a few individuals without requisite and due consultation with the wide public and elected representatives. This Report has detailed documentary evidence that strongly suggests that the actions of Mr. Amlan Aditya Biswas, IAS, former Deputy Commissioner and District Magistrate of Chitradurga District, in diverting the Amrit Mahal Kavals were presumably based on highly questionable motives, involved misrepresentation of critically relevant facts, flouted relevant and binding legal requirements emanating from the judiciary and the Karnataka Government itself, and resulted in the benefit of at least one (and possibly more) profit-making companies.

The fact that the Amrit Mahal Kavals are 'forests' as per both (a) the dictionary meaning of forests, and (b) the fact that they have been statutorily and authoritatively recognised as 'forests', has a considerable genealogy within the official decision-making processes in Karnataka. When deciding upon the question of whether the Amrit Mahal Kavals are 'forests' or not as per the Supreme-Court interpretation of how the phrase 'dictionary meaning' of 'forests' is to be interpreted, a set of relevant parameters tailored for and suited for appraisal of grassland ecosystems in Karnataka must come into play. The parameter/criterion for such declaration has to be more nuanced than a mere reliance on stand density or crown density of trees, keeping in mind the special bio-geographic characteristics of the ecosystems (for example, dry grassland, desert, or alpine meadow) and the State under analysis. Given the truly unique floral, faunal, historical and social attributes of the Amrit Mahal Kavals that have been outlined throughout this Report and in the Applicants' submissions before the Honourable National Green Tribunal, there remains no doubt that the Kavals undeniably constitute 'forests' deserving of protection and conservation in accord with the spirit of the Forest (Conservation) Act, 1980 and the rulings of the Honourable Supreme Court in *T. N. Godavarman Thirumalpad v. Union of India*. The Report of the Reconstituted Expert Committee- 1 headed by Mr. S. Nagaraja, IFS, Chief Conservator of Forests, which is based on affidavits filed by the State of Karnataka before the Supreme Court of India, recognizes Amrit Mahal Kavals as forests. As has been

highlighted in the Applicants' submissions before the Honourable National Green Tribunal, Rule 33 of the Karnataka Forest Rules (amongst other official sources) also expressly recognize Amrit Mahal Kavals as forests. This Report includes cogent, incontrovertible documentary evidence of Amrit Mahal Kavals in other parts of Karnataka being recorded as 'forests' in official government records. The decision of the Government of Karnataka in alienating the Amrit Mahal Kavals of Challakere in Chitradurga District without prior permission of Central Government is therefore in clear violation of the Forest (Conservation) Act, 1980.

It is also an incontrovertible fact that none of the applicable provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 have been complied with by the State of Karnataka, in particular the Karnataka State Forest Department, the Secretary (Forests) and the Deputy Commissioner, Chitradurga District, who are the directly designated officials to undertake the tasks mandated by this legislation. Further, the available evidence seems to suggest that the goals and authoritative institutional framework of the Biological Diversity Act, 2002 have been entirely ignored or side-lined in the decision-making process relating to the lands in question despite the abundant and unique biodiversity present therein.

Section 9, 17(a), 29 read with 51 (1) of the Wildlife (Protection) Act, 1972 have been violated by: a) the admitted act of deploying bombs in the Challakere region by Defense Research & Development Organisation (DRDO). These acts are also without clearance of any sort from any civilian authorities and in violation of applicable laws governing defence forces and defence related agencies; b) the admitted act of developing walls, barbed wire fences, roads, structures, etc. by several of the beneficiaries of this wrongful diversion of grassland ecosystems, in particular Defence Research & Development Organisation, Indian Institute of Science, Indian Space Research Organisation, Bhabha Atomic Research Centre, Karnataka Housing Board.

The projects proposed in the aforesaid Amrit Mahal Kavals of Challakere Taluk are in comprehensive violation of the Environment (Protection) Act, 1986, Environment Impact Assessment Notification, 2006, Water (Prevention and Control of Pollution) Act, 1974, and Air (Prevention and control of Pollution) Act, 1981. In addition, it has also been reported by the Karnataka State Pollution Control Board that all the proposed investors have commenced work without any statutory clearance. The decision to divert the Amrit Mahal Kavals of Challakere Taluk to the proposed projects also runs counter to the progressive rulings of the National Environment Appellate Authority and the Honourable National Green Tribunal as concerns the importance of accurate and cumulative environmental impact assessment in light of the overall significance of the Precautionary Principle and the Principle of Sustainable Development.

The adduced facts in this Report indicate that the main tenets of Indian environmental jurisprudence, that is the Public Trust Doctrine, the Precautionary Principle, the Polluter Pays Principle, the Principle of Intergenerational Equity, the Principle of Sustainable Development, the Principle of Prior and Informed Consent, the Principle of Eco-centricity, will be seriously compromised if the unique, biodiversity-rich, grassland ecosystems in Challakere Taluk of Chitradurga District, Karnataka are wantonly sacrificed in a blind suicidal rush towards ill-planned developmental 'progress' that is falsely and un-democratically claimed to be in the national interest. The rule of law and meaningful access to justice require knowledge-based, empirically-justified, sensitive and fearless responses from our laws, legal processes and legal institutions to remedy the wrong but still

reversible steps that have been taken so far with regard to the Amrit Mahal Kavals in Challakere Taluk of Chitradurga District, Karnataka.

## LIST OF ANNEXURES

- A. Order of the Honourable National Green Tribunal in Application Nos. 6 and 12 of 2013, dated 21<sup>st</sup> March 2013
- B. Terms of Reference of the Expert Committee issued by the Honourable National Green Tribunal
- C. Report of the 23<sup>rd</sup> May 2013 visit of the Expert Committee to the Challakere Amrit Mahal Kavals and of the hearings held in impacted villages on 24<sup>th</sup> and 25<sup>th</sup> May 2013
- D. Report detailing grassland ecosystems of Karnataka by Abi Tamim Vanak, Fellow, National Environmental Sciences Program, Ministry of Environment and Forests, Government of India & Fellow, Centre for Biodiversity and Conservation, Ashoka Trust for Research in Ecology and the Environment (ATREE), Bangalore
- E. *“Great Indian Bustard in Karnataka”*. Santosh Martin and Samad Kottur, Bellary, June 2013
- F. *“In search of the Lesser Floricans in North Karnataka”*, Santosh Martin and Samad Kottur, Bellary, June 2013
- G. *“A Note on the Floristic Diversity and Ethno-botany of Chitradurga district”*, Dr. N. M. Ganesh Babu, Senior Research Officer, Foundation for Revitalisation of Local Health Traditions, 2013
- H. Letter dated 30<sup>th</sup> March 2007 (No. MP/ /CTA) of Justice N. Y. Hanumanthappa, Former Chief Justice of Orissa High Court and then Member of Parliament (Lok Sabha), Chitradurga Constituency, to Shri. A. K. Anthony, Union Minister of Defence proposing location of defence projects in Challakere’s Amrit Mahal Kavals
- I. Letter dated 7<sup>th</sup> February 2008 (No. LND CR:178/2007-08) of Mr. Amlan Aditya Biswas, IAS, then Deputy Commissioner and District Magistrate Chitradurga District to Mr. Sudhakar Rao, IAS, Addl. Chief Secretary and Development Commissioner of Government of Karnataka, proposing location of various projects at Challakere.
- J. Extracts of key policies applicable to the Challakere case.