

FORM-I
BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

MEMORANDUM OF APPLICATION

(Under Section 18(1) read with Sections 14, 15 of National Green Tribunal Act 2010)

Application No.....of 2013

Between:

Environment Support Group
1572, 36th Cross, Intermediate Ring Road
Banashankari II Stage
Bangalore 560070
Represented by its Trustee Mr. Arthur Pereira

AND

- 1) The Union of India
Rep. by its Secretary to Government
Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex
Lodhi Road, New Delhi.
- 2) State of Karnataka
Rep. By its Chief Secretary
Vidhana Soudha
Bangalore 560001
- 3) Principal Secretary
Dept. Of Forests, Ecology and Environment
Government of Karnataka
Multistoreyed Building
Dr. Ambedkar Veedhi
Bangalore 560001
- 4) Chief Conservator of Forests
Regional Office (South)
Ministry of Environment and Forests
Kendriya Sadan
Koramangala
Bangalore 560034
- 5) Chairman
Karnataka State Pollution Control Board
Parisara Bhavan
Church Street
Bangalore 560001
- 6) Principal Chief Conservator of Forests
Karnataka State Forest Department
Aranya Bhavan
Malleswaram
Bangalore 560003
- 7) Chairman
Karnataka State Environment Impact Assessment Authority
7th Floor, M.S. Building, 4th Phase,
Bangalore 560001

8) Member Secretary
Karnataka State Biodiversity Board
Vanavikas
Malleswaram
Bangalore 560003

9) The Deputy Commissioner,
Chitradurga District
Karnataka.

10) The Principal Secretary
The Animal Husbandry and Fisheries Department
Government of Karnataka
Room No. 404, 4th Floor, Vikasa Soudha
Bangalore – 560 001

11) The Project Director
Bhabha Atomic Research centre
Post Box No. 1, Yelwal
Mysore – 571 130.

12) Group Head, Construction and Maintenance
ISRO Satellite Centre
Department of Space
Government of India
PO Box No. 1795, Airport road, Vimanapura Post
Bangalore – 560 017

13) Director,
Aeronautical Development Establishment
Defence Research Development Organisation
Ministry of Defence
C.V.Raman Nagar
Vimanapura Post
Bangalore – 560 017

14) Director
Indian Institute of Science
Talent Development Centre
Khudapura Village
Nayakanhaatti Hogli
Chelakere taluk,
Chitradurga District

15) Managing Director
M/s Sagitaur Ventures India Pvt Ltd.
Velankani campus
Building 1, South Wing
Ground Floor, 43, Electronic City
Phase II, Hosur Road, 560 100

16) Managing Director
Karnataka Udyog Mitra
49, 3rd Floor East Block
Khanija Bhavan
Rance Course Road
Bangalore 560 001

17) The Chairman
Karnataka Small Scale Industries Development Corporation Ltd
Industrial Estate, Rajaji Nagar,
West off Chord Road,
Bangalore – 560 010

18) The Assistant Executive Engineer
Karnataka Housing Board
District Unit
Chitradurga

TO,

**THE HON'BLE CHAIRMAN AND HIS COMPANION MEMBER OF THE
NATIONAL GREEN TRIBUNAL.**

**HUMBLE APPLICATION SUBMITTED
BY THE APPLICANT ABOVE NAMED**

The address of the Applicant is Environment Support Group, 1572, 36th Cross, Intermediate Ring Road, Banashankari II Stage, Bangalore 560070, represented by its trustee Mr. Arthur Pereira.

The address for service of notice on the Applicant is that of its Counsel M/s T.MOHAN & S.DEVIKA, having offices at No. 368, New Additional Law Chambers, High Court Buildings, Madras – 600 104.

The 1st Respondent is The Union of India Rep. by its Secretary to Government, Ministry of Environment & Forests Paryavaran Bhavan, CGO Complex Lodhi Road, New Delhi.

The 2nd respondent is the Chief Secretary of the Government of Karnataka , Vidhana Soudha, Bangalore 560001

The 3rd Respondent is Principal Secretary Dept. Of Forests, Ecology and Environment, Government of Karnataka Multistoreyed Building , Dr. Ambedkar Veedhi Bangalore 560001

The 4th Respondent is Chief Conservator of Forests, Regional Office (South), Ministry of Environment and Forests , Kendriya Sadan, Koramangala, Bangalore 560034

The 5th respondent is the Chairman, Karnataka State Pollution Control Board, Parisara Bhavan, Church Street, Bangalore 560001

The 6th respondent is the Principal Chief Conservator of Forests, Karnataka State Forest Department, Aranya Bhavan, Malleswaram, Bangalore 560003

The 7th respondent is the Chairman, Karnataka State Environment Impact Assessment

Authority, 7th Floor, M.S. Building, 4th Phase, Bangalore 560001

The 8th respondent is the Member Secretary , Karnataka State Biodiversity Board, Vanavikas, Malleswaram, Bangalore 560003.

The 9th respondent is The Deputy Commissioner, Chitradurga District in Karnataka State.

The 10th respondent is The Principal Secretary, The Animal Husbandry and Fisheries Department , Government of Karnataka, Room No. 404, 4th Floor, Vikasa Soudha, Bangalore – 560 001

The 11th respondent is the Project Director, Bhabha Atomic Research Centre, Post Box No. 1, Yelwal, Mysore – 571 130.

The 12th respondent is the Group Head, Construction and Maintenance, ISRO Satellite Centre, Department of Space, Government of India, PO Box No. 1795, Airport road, Vimanapura Post, Bangalore – 560 017

The 13th respondent is the Director, Aeronautical Development Establishment, Defence Research Development Organisation, Ministry of Defence, C.V.Raman Nagar, Vimanapura Post, Bangalore – 560 017

The 14th respondent is the Director, Indian Institute of Science, Talent Development Centre, Khudapura Village, Nayakanhaatti Hogli, Chelakere taluk, Chitradurga District.

The 15th respondent is the Managing Director, M/s Sagitaur Ventures India Pvt Ltd, Velankani campus, Building 1, South Wing, Ground Floor, 43, Electronic City, Phase II, Hosur Road, 560 100.

The 16th respondent is the Managing Director, Karnataka Udyog Mitra , 49, 3rd Floor East Block, Khanija Bhavan, Rance Course Road, Bangalore 560 001

The 17th respondent is the Chairman, Karnataka Small Scale Industries Development Corporation Ltd, Industrial Estate, Rajaji Nagar, West off Chord Road, Bangalore – 560 010

The 18th respondent is Asst. Executive Engineer of the Karnataka Housing Board, District Unit Chitradurga.

The Address for service of notice and process on the respondents is as stated above.

FACTS IN BRIEF

1. The Applicant Trust is registered under the Indian Trusts Act, 1882 vide Reg. No.: Book IV 8/98-99. The Applicant Trust is represented by its Trustee who is also specifically authorized to represent the Trust in the above said litigation.
2. The Applicant Trust has been involved in a wide variety of environmental issues and campaigns. Acknowledging its competence in addressing environmental law and policy matters and technical issues pertaining to ecology and environment, the Hon'ble High Court of Karnataka and Karnataka Judicial Academy enlisted its services in organizing a unique workshop on "*Judicial Enforcement of Environmental Law in Karnataka*" during August 2002. The organisation has assisted the State in a variety of public interest initiatives relating to environmental management, and is an active collaborator with a wide range of national and international research, academic and campaign organizations. Inherent to the organisation is a wide range of expertise from the areas of biodiversity conservation, forest management, ecology, public health, environmental law and policy, etc. The Applicant Trust has been actively involved in and initiated several campaigns for conservation of biodiversity in the State of Karnataka and also across India. In particular, it has raised a variety of public interest campaigns against indiscriminate deforestation, biopiracy, tree felling, encroachment of parks and public spaces, privatisation and commercialisation of commons, etc. In recognition of its contribution to the protection of lakes as commons, the Applicant Trust was awarded the United Nations 2012 "Water for Life" Award.
3. The Trustee representing the First Petitioner is a leading social activist in Mangalore, and has worked to uphold the fundamental rights of the poor and displaced communities for decades. He played a critical role in warning governmental authorities and the wider public about the likely consequences of expanding the Mangalore airport in violation of all applicable standards and norms, and even initiated a variety of Public Interest Litigations against the illegal and unscientific expansion of the airport. Regulatory and development agencies ignored these warnings and this resulted in the horrific crash of Air India 812 on 22 May 2010 killing 158 people. The aircraft overshot the runway and crashed into the abutting valley, a risk that had been anticipated in the PILs initiated by the Trustee representing the First Applicant, but unfortunately ignored in the decision-making process resulting in the expansion of the airport.

Background:

4. By way of this Application, the Applicant seeks the indulgence of this Hon'ble Tribunal in attending to an egregious violation of applicable statutes, norms, standards and Treaties by the State of Karnataka, various regulatory authorities, several agencies of the State and Union Governments and also private sector entities who have individually and collectively diverted approximately 10,000 acres of Amrit Mahal Kaval in Challakere Taluk of Chitradurga district of Karnataka, designated as 'district forest' per the Karnataka Forest Act and Rules, for the purpose of locating and advancing a variety of infrastructural and industrial investments. The facilities proposed include a nuclear enrichment centre, a full-fledged airport and drone testing facility, a synchrotron, a variety of manufacturing industries, space technology centre, etc. All these facilities have a significant and irreversible impact on the environment and bio-diversity, and on local project impacted communities, as they are classified as High Impact 'Red Category' projects by environmental regulatory authorities.
5. Decisions to site these projects have been taken rather secretively, with no consultation whatsoever with local impacted communities or even local elected bodies. Such actions on the part of the 2nd Respondent, State of Karnataka, is in gross violation of the Public Trust Doctrine, Principle of Inter-generational Equity, Principle of Prior and Informed Consent, Common Heritage of Humankind Principle, the Polluter Pays Principle, the Precautionary Principle, etc. By so acting, the Respondents have infringed upon and violated various international covenants and Treaties to which India is a signatory, including Rio Declaration 1992 (signed by India on 5th June 1992 and ratified on January 17, 2003), Convention on Biological Diversity (signed by India on 5th June, 1992 and ratified on 18th February 1994), Convention on Conservation of Migratory Species of Wild Animals, 1979 (signed by India on 23rd June 1979 and ratified on 4th May, 1982), Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 (signed by India on 16th November 1972), International Treaty on Plant Genetic Resources for Food and Agriculture, 2001 (signed and ratified by India on 10th June 2002), etc.
6. The Applicant submits that these actions on the part of the Respondents has allowed arbitrariness in procedure, thereby hitting at the core of Article 14 and is in blatant disregard and violation of Articles 19, 39 (a), 39 (b) and 39 (c) and not in keeping with the letter and spirit of Article 48, 48 (A) and Article 51 A (g) of the Constitution of India. In particular, these actions constitute a blatant violation of the Environment Protection Act, 1986, Forest Conservation Act, 1980, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1980, Environment

Impact Assessment Notification, 2006, Biological Diversity Act, 2002, Panchayat Raj Act, 1992, Nagarpalika Act, 1992, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and various other laws relating to land use planning, planned and democratic development for securing the equitable rights of all.

7. The Applicant respectfully submits that as a consequence of the actions of the Respondents, livelihoods of pastoral and agrarian communities in at least 60 villages directly dependent on these Kavals for their day to day existence has already been seriously compromised and threatened and thus constitutes violation of various Fundamental Rights such as the Right to a Wholesome Environment as contained in the Right to Life, the Right to Livelihood, the Right to Equality, the Right to Dignity and such other basic human rights.

Diversion of the Amrit Mahal Kaval lands in Challakere Taluk to various industrial and infrastructure purposes and commencement of project activities in gross violation of applicable environmental and forest laws:

8. The Applicant submits about 12000 acres of this unique grasslands ecosystem in Challakere Taluk of Chitradurga district in Karnataka were handed over to the custody of the Department of Animal Husbandry and Veterinary Services and a Sheep Board was established here in 1971 without any change in the nature of the lands as Amrit Mahal Kaval, i.e. District Forest. This Applicant respectfully submits that during the years 2008-2010, the Government of Karnataka transferred at least 9273 acres of the said Amrit Mahal Kaval in Challakere Taluk of Chitradurga district to a variety of industrial and infrastructure development projects. It is the contention of this Applicant that such transfer of land was done for a monetary consideration, and these decisions were fraught with a variety of illegalities, most especially the fundamental violation of laws governing the protection and conservation of environment and forests and also those protecting, regulating and governing the wise use of biodiversity and associated traditional knowledge and livelihoods. These actions also constitute gross violation of various laws and international treaties protecting wildlife, particularly those which are critically endangered and inhabit the aforesaid Amrit Mahal Kaval.
9. The Applicant submits that the transfer of the aforesaid land was undertaken in the following manner:
 - a) By a Karnataka Government order dated 21 May 2009 (Order No. RD/14/LGC/2008) 4000 acres of Amrit Mahal Kaval in Sy. NO. 343 of Varavu

Kaval village and 290 acres of land in Sy. No. 47 in Khudapura village (total 4290 acres) has been transferred to Defence Research and Development Organisation, Union Ministry of Defence. A true copy of this document is annexed at **Annexure 1**, along with its translation at **Annexure 1A**.

b) By a Karnataka Government order dated 28 May 2009 (Order No. RD/15/LGC/2008) 1500 acres of Amrit Mahal Kaval in Sy. NO. 47 of Khudapura village has been transferred to Indian Institute of Science, Bangalore. A true copy of this document is annexed at **Annexure 2**, along with its translation at **Annexure 2A**.

c) By a Karnataka Government order dated 10 December 2010 (Order No. RD/32/LGC/2010) 473 acres of Amrit Mahal Kaval in Sy. NO. 1 of Ullarti Kaval village and 100 acres in Sy. No. 47 of Khudapura village (total 573 acres) has been transferred to Indian Space Research Organisation, Bangalore. A true copy of this document is annexed at **Annexure 3**, along with its translation at **Annexure 3A**.

d) By a Karnataka Government order dated 10 December 2010 (Order No. RD/31/LGC/2010), 1410 acres of Amrit Mahal Kaval in Sy. NO. 1 of Ullarti Kaval village and 400 acres in Sy. No. 47 of Khudapura village (total 1810 acres) has been transferred to Bhabha Atomic Research Centre, Mumbai. A true copy of this document is annexed at **Annexure 4**, along with its translation at **Annexure 4A**.

e) By a Karnataka Government order dated 10 December 2010 (Order No. RD/46/LGC/2010), 250 acres of Amrit Mahal Kaval in Sy. NO. 1 of Ullarti Kaval Village and 50 acres in Sy. NO. 47 of Khudapura village (total 300 acres) has been transferred to Karnataka Small Scale Industries Development Corporation, Bangalore. A true copy of this document is annexed at **Annexure 5**, along with its translation **Annexure 5A**.

f) Further, 1250 acres of land in Kudapura Varavu Kaval, Ramdurga, Nelagettanahatty Village, Nayakanahatti Hoblie, Challakere- Nayakanahalli Road, Challakere is sought for establishing an "Integrated Solar Park Development along with Grid Connected 25 MW Solar PV Power Project" as proposed by M/s Sagitaur Ventures India Pvt. Ltd., as per the SHLCC clearance letter of Karnataka Udyog Mitra (Global Investors Meet) addressed to Member Secretary, Karnataka State Pollution Control Board, dated 7th July 2012 (No. KUM/SHLCC/293/AD-

3/2012-13). A true copy of this document is annexed at **Annexure 6**.

An overview of the allocation of lands and the purpose for which the said Amrit Mahal Kaval lands are diverted is described in tabular form below:

Sl. No	Organisation	Village Name	Sy. No.	Extent of land in acres	Purpose
A	B	C	D	E	F
1	Defence Research Development Organisation	Varavu Kaval and Khudapura	343, 47	4000 and 290 respectively (total 4290)	Advanced R&D complex, a 3.5 km runway and test centre for long-endurance (48-72 hours) UAVs and 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

Sl. No.	Organisation	Village Name	Sy. No.	Extent of land in acres	Purpose
A	B	C	D	E	F
					Power Project
	Total			9273 confirmed	

10. This applicant submits that all Amrit Mahal Kaval lands in the State of Karnataka have been designated per Rule 33 of the Karnataka State Forest Rules, 1969 as follows:

“Amrit Mahal Kavals – The rules for the management of district forests shall, *mutatis mutandis*, apply to Amrit Mahal Kavals which mean and include the land assigned by the Government for the pasturage of Amrit Mahal Cattle owned by the Government.”

11. Flowing from this fact in law, the Amrit Mahal Kaval of Challakere Taluk of Chitradurga District of Karnataka, designated as District Forests, has been diverted to non-forest purposes involving industrial, infrastructure development, defence and area development projects, in absolute contravention of Forest Conservation Act, 1980, Forest Rights Act, 2006 and other applicable laws, rules, orders and circulars, and the decisions of the Hon'ble Supreme Court in the T. N. Godavarman Thirumulkpad v. Union of India, AIR 1997 S.C. 1228 case. Unconfirmed reports suggest that more such land and abutting areas are likely to be diverted for subsequent urbanisation and infrastructure development. The applicant submits that environmental and social consequences of such massive transfer and diversion of grasslands have not in the least been surveyed, appreciated and understood as is mandated by the Environment Protection Act 1986, the Wildlife Protection Act, 1972, Biological Diversity Act, 2002, Forest Conservation Act 1980, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, etc.

12. This Applicant further submits that the agencies who have benefited from the aforesaid diversion of the Amrit Mahal Kaval have already begun a variety of project activities in gross violation of applicable environmental laws. This includes the construction by the 13th Respondent, Defense Research Development Organisation, of a 12 feet tall wall running now to a length of 28 kms., work on extending the length of which is still ongoing. The 14th Respondent Indian Institute of Science has set up a wide range of infrastructure and commenced research and extension operations. The

17th Respondent Karnataka Small Scale Industries Association has commenced project activities by modifying the land forms into industrial plots, and the 18th Respondent Karnataka Housing Board has begun forming residential layouts as well.

13. The Applicant submits a pictorial representation illustrating the nature of the landscape of the aforesaid Amrit Mahal Kaval, its use as pastoral lands, and also some of the livelihoods that are intricately linked to the continued existence of said lands at **Annexure 7.**

14. Taking note of these illegal activities, the 5th Respondent Karnataka State Pollution Control Board has issued a variety of notices on the beneficiary agencies as follows:

a) A Notice No. PCB/CTA/11/01 dated 12th April 2011 was issued by KSPCB to Director, P&PR Unit, Indian Space Research Organisation, stating that its activity in the aforesaid lands "attracts EIA Notification 2006 & 2009" and "prior environmental clearance from Ministry of Environment & Forests, Govt. Of Karnataka/Govt. Of India & consent of establishment" from KSPCB "under the provisions Water Act & Air Act" is essential and must be applied for "immediately". Further, it was stated that "if the projects is started construction/activity without prior CFE from the Board is violations under the provisions of the above said Acts". ISRO responded by letter dated 5th May 2011, No. ISAC:C&MG:C:Chitradurga:10-11, stating that preliminary works such as marking boundary stones and carrying out topographical survey are being taken up. Later on, the boundary walls are to be constructed. The facilities to be constructed are yet to be finalised by ISRO. It requires time to plan facilities and establish the same at Chitradurga" and "informed that as and when the planning is taken up necessary environmental clearance as a part of statutory clearance will be obtained" from KSPCB. A copy of the said notice is annexed at **Annexure 8** and a copy of the response to the notice from 12th Respondent Indian Space Research Organisation is annexed at **Annexure 9.**

b) A Notice No. PCB/CTA/11/03 dated 12th April 2011 was issued by KSPCB to Occupier, Indian Institute of Science, Chitradurga, stating that "at present you are having guest house, canteen & training centre facility in the existing sheep & wool development centre along with quarters building & office building." It was also stated that this activity in the aforesaid lands "attracts EIA Notification 2006 & 2009" and "prior environmental clearance from Ministry of Environment & Forests, Govt. Of Karnataka/Govt. Of India & consent of establishment" from KSPCB "under the provisions Water Act & Air Act" is essential and must be

applied for "immediately". Further, it was stated that "if the projects is started construction/activity without prior CFE from the Board is violations under the provisions of the above said Acts". No response appears to have been forthcoming to this notice. A copy of the said notice is annexed at **Annexure 10**.

c) A Notice No. PCB/CTA/11/02 dated 12th April 2011 was issued by KSPCB to Occupier, Bhabha Atomic Research Centre, stating that its activity in the aforesaid lands "attacts EIA Notication 2006 & 2009" and "prior environmental clearance from Ministry of Environment & Forests, Govt. Of Karnataka/Govt. Of India & consent of establishment" from KSPCB "under the provisions Water Act & Air Act" is essential and must be applied for "immediately". Further, it was stated that "if the projects is started construction/activity without prior CFE from the Board is violations under the provisions of the above said Acts". In response, BARC by letter dated 3rd May 2011, No. BARC/PD/T-1(C6)/2011 has stated that "we propose to take up our project towards construction of a Special Material Facility under XII Plan during 2012-2017. At present, we are in the process of initial survey for topography & fixing of boundary pillars. We are also initiating geo-technical and geo-hydrological studies as a pre-cursor to prepare EIA/EMP reports. We have also initiated action to engage a suitable consultant for EIA/EMP reportes preparation for submission to MoEF for obtaining Environmental Clearance." A copy of the said notice is annexed at **Annexure 11** and a copy of the response to the notice from 11th Respondent Bhabha Atomic Research Centre is annexed at **Annexure 12**.

d) A Notice No. PCB/CTA/11/04 dated 12th April 2011 was issued by KSPCB to Director, Aeronautical Development Establishment, Ministry of Defence, DRDO, Bangalore stating that its activity in the aforesaid lands "attacts EIA Notication 2006 & 2009" and "prior environmental clearance from Ministry of Environment & Forests, Govt. Of Karnataka/Govt. Of India & consent of establishment" from KSPCB "under the provisions Water Act & Air Act" is essential and must be applied for "immediately". Further, it was stated that "if the projects is started construction/activity without prior CFE from the Board is violations under the provisions of the above said Acts". No response appears to have been forthcoming to this notice. A copy of the said notice is annexed at **Annexure 13**.

e) A Notice No. KSPCB/RO/CTA/2012-13/552 dated 17th August 2012 was issued by KSPCB to M/s Sagitaur Ventures India Pvt. Ltd., Bangalore, stating that "this

office received letter cited ref (3) with direction to furnish specific opinion regarding Environmental siting guidelines to establish Integrated solar park at above said location. The letters neither forwarded by Udyoga Mitra nor the Head office KSPCB has no information regarding contact person or contact number. The officials of District industry commerce, Chitradurga was also contacted to obtain information about contact person and contact number to enable us to visit proposed location, the DIC, Chitradurga has no information regarding the same." No response appears to have been forthcoming to this notice. A copy of the said notice is annexed at **Annexure 14**.

15. The Applicant submits that despite such gross violation of the Environment Protection Act, 1986, the Environment Impact Assessment Notification, 2006, Water Act, 1974, Air Act, 1981 and various other laws including the Forest Conservation Act, 1980, no regulatory action has been initiated by regulatory agencies to penalise the offenders. As a matter of fact, the 1st Respondent Ministry of Environment and Forests and the 6th Respondent Karnataka State Forest Department have initiated no action till the filing of the application against the illegal diversion of forest land, and the former has also not initiated any action for the contravention of the Environment Protection Act, 1986 and the Environment Impact Assessment Notification 2006.

Diversion in violation of directions of the Hon'ble High Court of Karnataka:

16. That the State of Karnataka and its agencies were doing a very poor job of maintaining the Amrit Mahal Kaval lands of Chitradurga district is evident from the recorded pleadings of some local public spirited farmers who as Petitioners in the Writ Petition 17954/1997 (PIL) before the Hon'ble High Court of Karnataka contended that the respondent authorities "flouting .. statutory provisions, have been squandering Government land to be granted in favour of private individuals to the detriment of the interest of the village community" and that "due to the indifference and inaction on the part of the revenue authorities, many persons have encroached upon the reserved land and have resorted to illegal cultivation and inspite of the petitioners bringing to the notice of the revenue authorities, such encroachments and such illegal cultivation, the authorities have failed to take any action in accordance with law and have not prevented the encroachers".

17. The Petitioners prayed before the Hon'ble Court that the Amrit Mahal Kaval lands in Chitradurga district "is retained for grazing of the cattle and to further direct the authorities to take action to evict all encroachers and illegal occupants on this land and to restore the land for the reserved purpose of grazing of cattle". The Hon'ble Court

was pleased to also observe that "it is very obvious that the respondents have been evasive in their reply and are most inconsistent in their reply statement. While in one breath they say that they have nothing to do with the land and have no authority to even entertain any application seeking for regularisation of unauthorised occupation/cultivation, in the very next breath they say such application in Form No. 50 will be put up before the Committee meant for Regularisation of unauthorised occupation/cultivation after following the requisite procedure of surveying the land and extent of unauthorised occupation, which are clearly contradictory in nature."

18. Disposing the petition in favour of the petitioners the Hon'ble Court observed that "the entire land in S. No. 1 of Ramagiri Amruth Mahal Kaval of Gagasamudra village, Holalkere Taluk is a Government and reserved for the purpose of pasturage. 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." The Hon'ble Court further held 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.." On such basis, the Hon'ble Court directed the State to "preserve and protect the land in S. No. 1 of Ramagiri Amruth Mahal Kaval, Gagasamudra village, Holalkere Taluk, Chitradurga District, measuring an extent of 3040 acres which is admittedly Amruth Mahal Kaval land, as gomal land" and to "take immediate and appropriate steps under the provisions of the Act and Rule for removal of encroachment on this land..." In order that the import of this unprecedented direction was known to the public at large, the Hon'ble Court directed the respondents to "report the action taken as per the directions in this writ petition after a period of three months from the date of a receipt of a copy of this order by publishing the same at village Chavadi and Tahsildar's Office and also publish the same in a prominent vernacular news daily of the area and to submit a report in this regard to this Court". This order has achieved finality as it was not appealed and a true copy of the same is annexed at **Annexure 15**.

19. Subsequent to this order, the Karnataka Law Department issued an opinion dated 14th October 2003, No. AHF 07 A MA BHU 2001 (NO. LAW 818 OPINION-III 2003) 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”.

A copy of this opinion is annexed at **Annexure 16**.

20. Thereafter, 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 basis of the aforesaid order of the Karnataka High Court 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 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”.

A copy of this circular is annexed at **Annexure 17** and its translation from the original Kannada is annexed at **Annexure 17A**.

Ecological, Cultural and Economic significance of Amrit Mahal Kavals in

Chitradurga district of Karnataka:

21. Chitradurga district falls in the semi-arid region of central Karnataka and is known to be a district that is constantly affected by long periods of drought and minimal water security. The region impacted by the projects proposed by the Respondents receives very low rainfall, which averages to 45 cms. annually. Communities who have survived extreme weather and climatic conditions have done so by wise and intelligent use of soil, water, forests, grasslands and such other natural resources. With no perennial river flowing through this district, water is an extremely critical determinant and environmental limit of human activity. Pastoral and agrarian communities that have thrived in such conditions have done so over generations by building a variety of traditional and cultural norms in the use and access of natural resources that have promoted harmonious co-existence with variety of wild fauna and flora. Wild species such as the Black Buck (*Antelope cervicapra*), Great Indian Bustard (*Ardeotis nigriceps*), the Lesser Florican (*Sypheotides indicus*) and Indian Wild Dog or Dhole (*Cuon alpinus*), which are protected under Schedule I of the Wildlife Protection Act, 1972 as they are highly threatened or critically endangered, are known to exist in this region even as they have become locally extinct in other parts of India. Access to the commons has been a fundamental prerequisite and determinant to the survival of these communities and the continued evolution of wild flora and fauna.
22. The Applicant submits a comprehensive study of the Amrit Mahal Kaval and its socio-cultural and ecological importance conducted by the Maithreya Institute of Environment and Rural Studies, Tiptur, entitled "**Amruth Mahal Breed of Cattle, Kavals (Grasslands) and its Bio-Diversity – A Study Report 2011**", which was submitted to the Western Ghats Task Force of the Government of Karnataka, and the same is annexed at **Annexure 18**. As per this report, historically, Amrit Mahal cattle were grazed in different kavals based on the availability of pasture in different seasons. Amrit Mahal cattle were patronised by the royalty, most notably by Vijayanagar emperors, the Wodeyars and later by Tipu Sultan. This breed was prized for its speed, endurance, strength and unfailing loyalty. The bulls were used in warfare as a frontline of defence and to transport heavy army equipment on rough roads and difficult terrain. Their strength and ability to withstand drought make them equally well suited to dry land agriculture. To this day there is a great demand for the Amrit Mahal cattle and they are highly prized: auctions of 20 pairs of this cattle breed by Animal Husbandry Department has fetched about Rs. 15 lakhs.
23. During the Vijayanagar Empire these grasslands spread over 4.15 lakh acres across Karnataka. The management of pasture lands was assigned to servegaras and

kavalgaras who held administrative and judicial powers over the lands they managed. They could prosecute the trespassers and lawbreakers of the kaval. They were also responsible for making logistic arrangements for the nomadic cattle and the grazers. They ensured the well-being of the animals by preventing grazing, fire, encroachment and felling of trees in the kaval. Even collection of dung from the pasturelands was not allowed as they believed that the dung improves the quality of pasture. After the management of the kavals was taken over by the State government in 1954, the post of kavalgaras has mostly become ceremonial. They are not paid any salary for their services. As compensation, they are allotted five acres of agricultural land, which they can use only to cultivate food and fodder crops. Expenses they incur while on work for registering cases or seeking medical treatment are not recompensed. Even so several of them passionately continue to protect the Kavals claiming that the honour of being kavalgara is what keeps them going.

24. Such traditional methods of management have led to conservation of biodiversity in these Kavals, which are predominantly grasslands in the Chitradurga district. While preservation of the grasslands is critical for providing pasture and suitable conditions for breeding the cattle, what with the servegars and kavalgaras serendipitously working with communities in retaining its biodiversity value, these commons are also critical wildlife habitats for a variety of wild animals such as black buck, wolf, hyena, jackal, porcupine, etc, and a wide range of flora endemic to grasslands.
25. This applicant respectfully submits that the specific intent of conserving these habitats for the sustenance of Amrit Mahal cattle over generations has directly resulted in conservation of grassland ecosystems. This intricate sustainable system is today falling apart due to various factors and mere 27,468 ha. of the kaval land remains in 62 villages of six districts – this is almost entirely in the custody of the Government of Karnataka. The breeding of cattle has also been taken over exclusively by the Department of Animal Husbandry and Veterinary Services, with minimal participation of local communities, who have for generations worked to preserve this rare cattle breed.
26. Another critical aspect of the grasslands ecosystems that this Applicant respectfully submits is that it is an extraordinary watershed. This is evident in the fact that the Challakere Amrit Mahal Kavals are replete with a variety of water bodies, including lakes and ponds, and seasonal streams. Such wetlands provided a variety of ecological niche spaces for various wildlife, especially migratory waterfowl, and are critical drinking water sources for local communities and their livestock. Moreover, the very high water absorption capacity of these grasslands assist in capturing the scant rainfall that the region receives in recharging surface and ground water aquifers, which

constitute a major support system for the high agrarian and pastoral dependencies in the region.

27.A **“Rapid Biodiversity Survey of the Kudapura Campus, Indian Institute of Science, 25-28 June 2011”** undertaken by Centre for Ecological Sciences, Indian Institute of Science, Bangalore draws the following conclusion about the extraordinary biodiversity of the Amrit Mahal Kaval in Chalakere Taluk of Chitradurga District, which is produced without prejudice to the grounds and prayers of this Application:

“ 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 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.

.....

The land for these campuses has recently been taken over from the local people, for whom this was a grazing commons, and the healthy state of the ecosystem shows us that the local grazers and farmers have been wise custodians of this landscape.

We should ensure that we do not play the role of thoughtless destroyers of so precious a heritage.” (Emphasis in original.)

The Applicant submits that what is reported by the ecologists of the rich biodiversity in Kudhapura area is reflective of the ecological richness of the entire Amrit Mahal Kaval of

Challakere Taluk. A copy of this Rapid Survey is annexed at **Annexure 19**.

Diversion of Amrit Mahal Kaval in contradiction of various Policies of the Government of India and Karnataka:

28. The Applicant submits that the diversion of the Amrit Mahal Kaval is in contradiction to a variety of policy initiatives of the Government of India and also the State of Karnataka.

29. The National Policy for Farmers, 2007, for instance, has recognised the critical importance of protecting pastoral lands as a part of a wider strategy of securing livelihoods of pastoral communities, and commits to the following action:

“6.2 Pastoralists

The following steps would be initiated to ensure better livelihood opportunities for pastoralists:

(i) Restoration of traditional grazing rights and camping rights in respect of forest areas and in those areas earmarked for grazing purpose in village common lands.

(ii) Formalising entitlements (including issue of permanent grazing cards) for traditional pastoralists/herders maintaining native animal breeds to enable free access to notified or demarcated grazing sites and migration routes.

(iii) Grazing land and drinking water sources for livestock will be conserved and expanded to the extent feasible.

7 SPECIAL CATEGORIES OF FARMING

(iv) In-depth documentation and characterisation of indigenous livestock breeds and preservation thereof would be carried out to recognise and protect the intellectual property rights of the local communities / individuals conserving these livestock breeds.

(v) Pastoralists would be involved in all local natural resource management programmes, including village forest committees and joint forest management.”

30. According to the **Report of the Sub Group on Fodder and Pasture Management Constituted under the Working Group on Forestry and Sustainable Natural Resource Management Planning Commission Version:1.5** (21 September, 2011) by the Planning Commission of India, the lack of conservation of pastoral lands and disinterest in the needs of pastoral communities is creating a range of serious and

irreversible repercussions to the advancement of social justice and ecological harmony. The following are relevant extracts from this report:

“2.2.1 Diversion of grazing lands for non-pasture uses: Most of the pastures are neither defined nor marked on ground, and thus the total extent of such areas is a matter of guesstimate. Even as only 12.15 million ha of land in the country is classified as permanent pastures/ grazing lands, grazing is estimated to occur on about 40% of the land area in the country, most of these lands being not designated as grazing lands. In the absence of such designation and accompanying land records and maps, these non-designated grazing lands are gradually being put to other land uses, causing reduction in extent of already fragmented grazing lands. As per estimates, the country’s pastures have reduced from about 70 million ha in 1947 to just about 38 million ha in 1997. Major proportion of this loss of pasture lands is from the village common lands. 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.

3. Gap Analysis

The various issues that impact the strengthening of fodder and pasture resources in the country are due to various gaps that exist in the policy administrative and research frameworks. Some of the major gaps are:

3.1 Policy Level: The absence of pasture management and grazing policy at national/ state level have rendered the pasture lands, including village commons and unculturable wastes, open to developmental, societal and grazing pressures. Large chunks of such lands have experienced change in land use due to transfer for developmental projects, land grants to landless, plantations on degraded pastures and bringing of such lands under irrigated cultivation at the expense of traditional agro-forestry practices. It is estimated that the area under permanent pastures and other grazing lands has shrunk from 70 million ha in 1947 to just about 38 million ha by 1997.

The major policy related issues for the shrinkage and degradation of common grazing lands are

- (i) transfer of land for developmental purposes,
- (ii) allocation of land to landless,
- (iii) bringing of more and more land under irrigation and shift in crop preference,
- (iv) closing of land for raising plantations/ watershed management projects,

non-inclusion of local bodies in management of such areas,
 (vi) non-sustainable use/ overgrazing, and
 (vii) non-finalisation of National Grazing Policy.

It is estimated that the total recorded pasture land in the country has shrunk by more than 30% since independence. It is also estimated that about 78% of the forest area has degraded due to heavy grazing and other unregulated uses, adversely affecting their productivity. Similarly, the absence of such a policy has encouraged unilateral implementation of animal husbandry policy that seeks to increase the number of livestock without corresponding focus on developing fodder resources. It has resulted in further degradation of the pastures and fodder resources. A comprehensive pasture management and grazing policy would have taken care of such issues. There is, therefore, an urgent need to enunciate pasture management and grazing policy at national level over the 12th Plan period."

31. Similar concerns have been raised by the Planning Commission (Environment and Forest Division) on the gross neglect of grassland ecosystems as is evident from the findings and recommendations of its **Task Force on Grasslands and Deserts for the Environment and Forest Sector for the Eleventh Five Year Plan (2007-2012)** where it is observed with deep concern that:

"Grasslands are not managed as an ecosystem in their own right by the Forest Department whose interest lies mainly in trees, not by 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 depends. Grasslands are the 'common' lands of the community and while there have been robust traditional institutions ensuring their sustainable management in the past, today due to take-over by government or breakdown of traditional institutions they 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. Indeed they are often looked at as 'wastelands' on which tree plantations have to be done, or which can be easily diverted for other uses. Such diversions often put even more pressure on adjoining ecosystems for grazing and fodder removal, resulting in a cascading chain of degradation. The lack of clear tenure to local communities, confused land records between the Revenue and Forest Departments, and other such issues of land rights and responsibilities also compound the problem".

32. Some of the recommendations of the Task Force that are relevant for the preservation of Amrt Mahal Kaval are:

“Modify the new EIA guidelines by including ecologically fragile and environmentally sensitive areas where prior EIAs will have to be made mandatory.

To increase grasslands and desert ecosystems in Protected Area system
Protection and enhancement of PAs in arid and semi-arid regions and also protection of wildlife outside PA system should be given high priority and should be integrated in the over-all land-use policy of the country.”

33. The Applicant submits that this analysis by the Planning Commission is absolutely applicable in the current context where the Respondent State of Karnataka has illegally diverted the Amrit Mahal Kavals of Challakere Taluk, which are predominantly grassland ecosystems. The Applicant respectfully submits that while on the one hand the Government of India is making earnest efforts to conserve such grasslands ecosystems for the benefit of pastoral communities and wild life, the Respondent State of Karnataka is diverting such lands to industrial and infrastructural development purposes in gross variance to stated policy. This has come up for serious criticism from noted human ecologist Dr. Madhav Gadgil who in the **ENVIS Technical Report No. 16** (December 2004) which is a part of the **Karnataka State of Environment Report and Action Plan on Biodiversity sector**, has recorded his concern in the following manner:

“5.2 Habitat destruction and fragmentation

Fragmentation of forest habitats has exacerbated people- wild life conflicts, as when elephants attempt to move along their traditional migratory routes, and with traditionally protected species like peafowl and monkeys, as well as with others like wild pig and jackal. The loss of most of the grazing lands and other uncultivated lands that used to be a vital ingredient of Karnataka’s agro-ecosystems has resulted in scarcities of biomass resources such as fuelwood, fodder, bamboo, fencing and thatching material for the rural population, most notably for rural artisans.”

34. The applicant also submits that the Department of Animal Husbandry and Dairying of the Ministry of Agriculture, Government of India has produced a comprehensive **“Country Report on Animal Genetic Resources Of India”** where it is observed

that:

“Many local livestock breeds and minor species continue to represent the lifeline of rural populations. They fulfill a much wider range of functions and provide a large number of products. Their maintenance is ecologically more sustainable, especially in marginal environments. They often have scope for specialty products. Indigenous animals are being maintained by farmers in small herd/flock size. The number of holding for all the breeds are very large. They are well adapted to the local conditions under low input system and are proving employment and livelihood to a large section of the society under the rural conditions. The diversity of AnGR helps them to produce under diverse environment. Commercialization of animal husbandry practices is still slow in most parts of India.”

35. The Applicant submits that it is clearly evident from these policies that the Government is keen to ensure that grassland ecosystems form a critical support system for biodiversity conservation, protection of wildlife, as grazing pastures support agrarian and pastoral communities, are a critical watershed in semi-arid regions and provide a variety of options to rural communities extending supplementary income in developing their quality of life and in improving socio-economic status, while living a life of dignity and rich cultural tradition. In this context, it is evident that the current action of the State of Karnataka in diverting the Amrit Mahal Kaval of Challakere Taluk is opposed to public policy.

Parliamentary Committee finds land for Defence Projects acquired far in excess of actual requirements

36. The Lok Sabha Standing Committee on Defence (2005-06) undertook **“A Critical Review of Rehabilitation of Displaced Persons”** in its Thirteenth Report. The Committee discovered that the Ministry of Defence has the propensity to acquire lands far in excess of actual requirements, and that this has caused needless displacement of local communities, directly and indirectly. The following are relevant extracts from the Introduction Chapter of this report:

“Government acquire private lands for undertaking welfare measures. The Ministry of Defence also acquire lands for operational use of Defence Forces and other Defence purposes. This compulsory acquisition of private lands, displaces people, from their ancestral land forcing them to give up their home, assets and means of livelihood. Therefore, displacement uproots people not just from their homes but also from their traditional occupations and livelihoods that they are

familiar with. Hence, displacement result into traumatic, psychological, socio-cultural and economic insecurity.

1.2 In most cases, the displaced have not been compensated and resettled. The few who have been resettled have been sent to areas that are not suited for agriculture or do not support the kind of occupations that the outstees are used to. Besides, many rehabilitation places lack basic amenities like health, education, sanitation etc.

1.4 The system of extending cash compensation under the LAA and such other Acts in most cases do not enable the affected families to obtain cultivable agricultural land homestead and other resources which they have to surrender to the State. The difficulties are more acute for persons who are critically dependent on the acquired assets for their subsistence/livelihoods, such as landless agricultural workers, forest dwellers, tenants and artisans, as their distress and destitution is more severe, and yet they are not eligible for cash compensation.

1.5 Further, due to disputes on ownerships of land in the absence of valid papers of their lands, the affected persons do not get due compensation. Further, the State Government in most of the cases do not adhere to prescribed time limit for awarding compensation and do not pay compensation as per the actual market value as a result people go to courts for justice and subsequently final settlements get delayed and large number of cases are still pending in various courts and people are still facing manifold problems.

1.7 The Committee note that the Ministry of Defence has been acquiring vast tracts of land before Independence and till date for operational use of defence forces and other defence purposes. The land is being acquired under age old Land Acquisition Act (LAA), 1894 and Defence of India Act, 1939 framed during the British time and are colonial in nature. Though these Acts have been amended from time to time, they are totally inadequate to meet the present day needs and aspirations of the people. This was amply brought out during oral evidences, tendered before the Committee by representatives of Ministry of Law, Rural Development and State Government officials. The Committee are constrained to note that there was no policy for rehabilitation of displaced persons as such and only in 2004, guidelines have been issued in the form of National Policy on Resettlement and Rehabilitation (NPRR), 2003. In the absence of a policy for

rehabilitation, the displaced persons were being given meagre compensation for the land acquired for defence projects and no effort was being made to resettle and rehabilitate them properly. In view of foregoing, the Committee strongly feel that there is an urgent need to have a comprehensive and more democratic legislation to deal with the matter relating to Land Acquisition, Compensation, Resettlement and Rehabilitation. The Ministry of Defence being the largest user of land should take appropriate initiatives with the concerned Ministries in this regard. The Committee further desire that the Ministry of Defence should have their own practical and better package for resettlement and rehabilitation till the commencement of this comprehensive legislation.

1.8 The Committee note that large number of people sacrifice their ancestral land, traditional occupations and livelihoods due to acquisition of land for various Defence purposes. Therefore, it becomes the responsibility of the Ministry of Defence to ensure that the affected people get fair amount of compensation and timely rehabilitation in order to create a sense of pride and patriotic feeling in their mind that they have sacrificed their valuable property for the cause of the nation.

1.10 On examining various representations and oral evidences of the displaced families who have lost their lands due to defence acquisition over the years, the Committee note that most of them have not been properly resettled and rehabilitated and are still suffering. The Committee desire that Government should consider their cases sympathetically and extend all possible assistance wherever feasible.

2.25 It has been learnt from one of the representations received by the Committee that for defence projects, unnecessarily vast tracts of land are taken from civilians irrespective of actual requirement of the project e.g. for National Defence Academy (NDA), 8,000 acres of land was acquired, out of which not more than 25% is utilized, rest has remained un-utilized even after 60 years. When asked to state the justification for acquiring more land and whether the Ministry is thinking of returning the land to the displaced persons by preserving the ownership rights of defence authorities, the Ministry of Defence in their supplementary replies stated.

"Acquisition of land for defence related activities is being done keeping in

view the present and future requirements. Requirement of land is established by a Board of Officers as per given scale of land authorization and acquisition is done based on laid down rules and procedures. Excessive land is not acquired. Since funds for executing various planned projects are not available in bulk, some of the areas which are otherwise zoned for various units/installations remain vacant, possibly giving an erroneous impression that the land is in excess to the requirement and is remaining unutilised. It is reiterated that no land is acquired more than authorised requirement. There is no proposal for return of land to the displaced persons.” (Emphasis in original)

37. The Applicant submits that it is clearly evident from the above that acquisition of lands or diversion of commons and forest lands purportedly in the national interest has often been undertaken without due diligence and with scant regard to the adverse impacts on fragile ecosystems and local communities. It is also evident that this is an irreversible process and must therefore be undertaken with a most meticulous examination of the siting criteria, critical review of land use demanded, and transparent and public accountability of the rationale for diversion of lands to industrial, defence and infrastructure needs. The Applicant contends that relevant criteria have not guided the decisions of the State of Karnataka in so diverting about 10,000 acres of Amrit Mahal Kaval of Chitradurga district to non-forest purposes, and this is an egregious abuse of executive power given the fact that all the investments proposed constitute very high and potentially irreversible impacts on the environment, forests, biodiversity and associated livelihoods of thousands of agrarian and pastoral communities.

38. This Application is filed on the following among other grounds.

GROUND

Violation of the Forest (Conservation) Act, 1980

- A) It is submitted that the diversion of the Amrit Mahal Kavals in Challakere taluk are in violation of the Forest (Conservation) Act, 1980.
- B) S. 2 of the Forest (Conservation) Act, 1980 provides that no State Government or other authority shall make any order directing that any forest land or any portion thereof may be used for any non-forest purpose without the prior approval of the Central Government. The Explanation to S. 2 clarifies that “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for cultivation (of tea,

coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants) or any purpose other than reforestation. S. 2 further provides that no State Government or other authority shall make any order directing that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government.

- C) It is submitted that the diversion of about 9273 acres of Amrit Mahal Kavals in Challakere taluk without the permission of the Central Government results in a violation of S. 2 of the Forest (Conservation) Act, 1980 in light of the afore-mentioned facts and the following reasons.
- D) In the case of *T.N. Godavarman Thirumulkpad v. Union of India*, AIR 1997 S.C. 1228, the Court reiterated that the Forest (Conservation) Act, 1980 "*was enacted with a view to check further deforestation which ultimately results in ecological imbalance and therefore, the provision made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land" occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.*" The Hon'ble Supreme Court also directed that "*all on-going activity within any forest in any State throughout the country, without the approval of the Central Government, must cease forthwith.*" It is submitted that the diverted lands in question constitute "statutorily recognized forests" and also fall within the ambit of the dictionary meaning of the word forest.
- E) Amrit Mahal Kavals are statutorily recognized forests as per the applicable and relevant forest laws of Karnataka. A careful reading of the Karnataka Forest Act, 1963 and the Karnataka Forest Rules, 1969 lead to the inescapable conclusion that the Amrit Mahal Kavals are statutorily recognized as both "Protected Forests" and "District Forests" under the law applicable in Karnataka. It is pertinent to briefly excerpt here from the relevant sections and rules. The Karnataka Forest Act, 1963 does not include a clear definition of the word "forest" and an interpretation of the general word "forest" finds mention only once in Chapter V relating to control of forests and lands not being the property of the Government. S. 36 provides that for the purposes of Chapter V of the Act, "*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". Rule 2 (2) of the Karnataka Forest Rules, 1969 provides that *"Forest area" includes all lands notified as forest under any law or administered as Forest, whether State-owned or private, and whether wooded or maintained as potential forest land.*" S. 2(2) of the Karnataka Forest Act, 1963 provides that *"District Forests" includes all lands at the disposal of Government not included within the limits of any reserved or village forest nor assigned at the survey settlement as free grazing ground or for any public or communal purposes*". Further, S. 2(13) provides that *"Protected Forest" means any area at the disposal of Government which has been placed under special protection under clause (ii) of sub-section (2) of Section 33 or is declared to be a protected forest under Section 35*". S. 33 of this Act titled 'Power to make rules for district forests' provides the State Government with the power to *"make rules to regulate the use of the forest produce or of the pasturage of and land at the disposal of Government and not included in a reserved or village forest.*" Significantly, S. 33(2)(ii) further specifies that such rules may *"provide for placing any area at the disposal of Government under special protection in view of its subsequent settlement and constitution as a reserved forest or for any other purpose, and prescribe the conditions and penalties attendant on such special protection.*" Accordingly, Chapter IV of the Karnataka Forest Rules, 1969 provides for the rules relating to District Forests. Rule 33 clearly enshrines the statutory recognition of Amrit Mahal Kavals as equivalent to District forests by providing that *"[t]he rules for the management of district forests shall, mutatis mutandis, apply to Amrit Mahal Kavals which mean and include the land assigned by the Government for the pasturage of Amrit Mahal Cattle owned by the Government.*" Further, Amrit Mahal Kavals can also be understood as falling within the definition of "Protected Forests" under the Karnataka Forest Act, 1963. Rule 33 of the Karnataka Forest Rules, 1969 incontrovertibly provides for the placing of the Amrit Mahal Kavals under special protection and prescribes (by extension of the rules applicable to District Forests) the conditions and penalties attendant on such special protection as required by S. 33(2)(ii). Amrit Mahal Kavals therefore also fall within the definition of "Protected Forests" as per S. 2 (13) of the Karnataka Forest Act, 1968. The fact that Amrit Mahal Kavals are statutorily recognized as forests as per the applicable Karnataka forest laws is confirmed by the explicit mention of Amrit Mahal Kavals in Paragraph 41 (relating to minimum extent of village forests) and Paragraph 142(9) (relating to general privileges applicable to the entire State) of the Karnataka Forest Manual (1976).

- F) It is further submitted that the specific floral and faunal characteristics of the Amrit Mahal Kavals imply that the diverted lands in question do fall within the dictionary meaning and purposive interpretation of the word "forests". The Supreme Court of India considered several such dictionary definitions of the word "forest" in *Samatha v.*

State of A.P., AIR 1997 SC 3297, before observing: "It would thus be seen that 'forest' bears extended meaning of a tract of land covered with trees, shrubs, vegetation and undergrowth intermingled with trees with pastures, be it of natural growth or man-made forestation." The numerous dictionary definitions of "forest" referred to (in paragraph 121 of the afore-mentioned judgment) convey three distinctive aspects through which the word forest may be understood: 1) the existence of a tract of land with vegetation (this could be trees, herbs, shrubs, litter of leaves and branches, etc.); 2) the existence of wild beasts and birds distinctive to the tract of land in question; 3) the existence of royal or governmental authority that privileges the particular land in question and regulates the use of the plants and/or animals found there.

- G) Further, the recently released 'Report of the Committee to Formulate Objective Parameters for Identification of Inviolable Forest Areas', Ministry of Environment and Forests, Government of India, July 2012, points out that due to the vast diversity of the flora and fauna in India, more than 178 forest types of natural origin have been identified in the country's forests as per the 'Champion and Seth' (1968) classification. This includes many distinct types of tropical dry deciduous forests (including dry grass lands, scrub and savannah forests). The 2012 Report also assigns a parameter of "wildlife value" for identifying and deciding on inviolable forest areas and states that exclusive breeding sites/habitats of rare/endangered species even if they are not notified as Wildlife Sanctuary/National Parks would receive the highest importance (the other five parameters being forest type, biological richness, forest cover, landscape integrity and hydrological value).
- H) It is submitted that the distinctive flora, fauna (including more than one endangered species), and historical origins of the Amrit Mahal Kavals constitute them as forest in accordance with a linguistic and common-sense interpretation of the word "forest" in the Indian context.
- I) The Supreme Court of India in *Lafarge Uranium Mining Pvt. Ltd. v. Union of India*, (2011) 7 SCC 338 has issued guidelines to be followed by the Central Government, State Government and the various authorities under the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986. The Court while explicitly clarifying that these guidelines are to be implemented in all future cases, has directed that "[t]he principles/ guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980." The Court has further held that "[i]f the project proponent makes a claim regarding status of the land being non-forest and if there is any doubt the site shall be inspected by the State Forest Department along with the

Regional Office of MoEF to ascertain the status of forests, based on which the certificate in this regard be issued." In this decision, the Court also highlighted the need for *"appropriate safeguards in the Environment Clearance process to eliminate chance of the grant of Environment Clearance to projects involving diversion of forest land by considering such forest land as non-forest"*.

- J) Given that the Supreme Court of India has clarified that the National Forest Policy, 1988 should be read as part of the Forest (Conservation) Act, 1980, some policy prescriptions of direct bearing to the Amrit Mahal Kavals are included below. Paragraph 2.1 of the National Forest Policy, 1988 states that the basic objectives that should govern the National Forest Policy include: *"[m]aintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country", "[c]onserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country", "[c]hecking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the "interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs", and "[m]eeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal populations"*. Paragraph 4.4.1. provides that *"[f]orest land or land with tree cover should not be -treated merely as a resource readily available to be utilised for various projects and programmes, but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Construction of dams and reservoirs, mining and industrial development and expansion of agriculture should be consistent with the needs for conservation of trees and forests."* Paragraph 4.5 states that *"Forest Management should take special care of the needs of wildlife conservation, and forest management plans should include prescriptions for this purpose."* It is submitted that a consideration of the status of the Amrit Mahal Kavals in the context of the Forest (Conservation) Act, 1980 should also take due note of these policy prescriptions.

Non-compliance with, and Frustration of, the Biological Diversity Act, 2002

- K) It is submitted that the diversion of the Amrit Mahal Kavals has been carried out without consideration of the Biological Diversity Act, 2002 and as a result of the official non-implementation of several mandatory duties under the same. The diversion and the subsequent construction activities of several of the Respondents are directly

contributing to the frustration of the objectives and guarantees of the Biological Diversity Act, 2002.

- L) The Preamble to the Biological Diversity Act, 2002 declares that it seeks to *"provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith."* S. 36 (3) of the Act provides that *"[t]he 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."* In *T.N. Godavarman Thirumulpad v. Union of India*, AIR 2005 SC 4256, the Supreme Court has observed: *"The national development agenda must recognise the necessity of protecting the long-term ecological security. The problem area is the growing population, high degree of mechanisation and steep rise in energy use which has led to activities that directly or indirectly affect the sustainability of the environment. It is recognised that the sustainable use of biodiversity is fundamental to ecological sustainability. The loss of biodiversity stems from destruction of the habitat, extension of agriculture, filling up of wetlands, conversion of rich biodiversity sites for human settlement and industrial development, destruction of coastal areas and uncontrolled commercial exploitation. It is thus evident that the preservation of ecosystems, biodiversity and environment whether examined on common-law principle or statutory principle or constitutional principle, eyeing from any angle, it is clearly a national issue to be tackled at the national level. All initiatives are required to be seriously pursued."* The diversion and subsequent enclosure of the Amrit Mahal Kaval lands results in loss of the unique habitat of a large number of endangered and valuable plants and animals. In particular, it militates against the fundamentals of *in situ* conservation of one of the finest varieties of indigenous cattle known to India. These factors directly imperil the biological diversity and associated traditional and contemporary knowledge systems relating thereto in the Amrit Mahal Kavals in Challakere taluk.
- M) S. 36(1) of the Biological Diversity Act, 2002 provides that *"[t]he Central Government shall develop national strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of areas rich in biological resources, promotion of in situ, and ex situ conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity."* The Explanation to S. 36 clarifies that *"in situ conservation" means the conservation of ecosystems and natural habitat and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in*

the surroundings where they have developed their distinctive properties."

- N) In *Tarun Bharat Sangh v. Union of India*, 1992 Supp. (2) SCC 448, the Supreme Court pointedly noted: *"The conception of ecological balance in nature is based on the fundamental concept that nature is 'series of complex biotic communities of which a man is an interdependent part' and that it should not be given to a part to trespass and diminish the whole. The largest single factor in the depletion of wealth of animal life in nature has been the 'civilised man' operating directly through excessive commercial hunting or, more disastrously, indirectly through invading or destroying natural habitats."*
- O) As has been indicated earlier in this petition, the Amrit Mahal Kavals are areas rich in biological diversity including many varieties of medicinal plants and endangered faunal species including the Black Buck and the Great Indian Bustard. Further, these are the only natural surroundings in the world where the revered Amrit Mahal cattle have developed their distinctive properties. The diversion of the said lands, the commencement of construction and enclosing of properties through concrete walls by several of the Respondents, and the continued mindless and unregulated development of these projects directly frustrate the conservation and sustainable use of biological diversity as contemplated by S. 36 (1) and relevant decisions of the Supreme Court of India.
- P) S. 36 (2) of the Act provides that *"[w]here 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."* Of particular relevance here, S. 36(4)(i) of the Act states 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."* Finally, S. 36(5) of the Act states that *"[t]he Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the National Biodiversity Authority through such measures, which may include registration of such knowledge at the local, State or national levels, and other measures for protection, including sui generic system."*
- Q) The Intergovernmental Committee on Intellectual Property and Genetic Resources,

Traditional Knowledge and Folklore has pointed out (at http://www.wipo.int/meetings/en/topic.jsp?group_id=110) that the Convention on Biological Diversity (which India has ratified and the Biological Diversity Act, 2002 gives effect to) "recognizes the value of traditional knowledge in protecting species, ecosystems and landscapes, and regulated access to it and its use. Its provisions obliges each contracting party, as far as possible to, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices."

- R) The diversion of the Amrit Mahal Kavals and the unregulated trajectory of the proposed projects represent a serious threat to an area rich in biological diversity, the habitat of a number of floral and faunal species, and to the valuable traditional knowledge of the local people relating to such biodiversity.
- S) It is submitted that the manner of diversion of the Amrit Mahal Kavals undermine the logic, rationale, intrinsic merit, and future potential of a range of institutional processes contemplated by the Biological Diversity Act, 2002. S. 41 (1) of the Biological Diversity Act, 2002 states that "[e]very 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 micro organisms and chronicling of knowledge relating to biological diversity." S. 41 (2) requires that 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." S. 23 (a) provides that "[t]he functions of the State Biodiversity Board shall be to advise the State Government, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilization of biological resources". Further, S. 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." Finally, S. 18 (3) of the Act provides that the National Biodiversity Authority may "advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as heritage sites and

measures for the management of such heritage sites" and "advise the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources."

- T) The diversion of the Amrit Mahal Kavals in a hurried, non-participatory, and non-reasoned way without consulting or seeking the input of the Biodiversity Management Committee, the State Biodiversity Boards, and the National Biodiversity Authority militates against the objectives and institutional guarantees guaranteed and contemplated by the National Biodiversity Act, 2002. Further, the collective result of the actions and omissions of several of the Respondents have exposed natural resource dependent communities to a variety of risks, as the bio-resources that they depend on for their livelihoods, which they have protected for millenia, are being diverted without the communities' Prior and Informed Consent as required per law (Convention on Biological Diversity, 1992: Biological Diversity Act, 2002; Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, 2002, etc.).

Violation of the Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and related statutes, principles and delegated legislation

- U) It is submitted that the hasty diversion of the Amrit Mahal Kavals and the subsequent illegal construction activities by several of the Respondents violate the Environment (Protection) Act, 1986, related statutes and delegated legislation including the Environment Impact Assessment Notification, 2006.
- V) The Environment Impact Assessment Notification, 2006 has been issued in exercise of the powers conferred by S. 3 (1) and S. 3(2)(v) of the Environment (Protection) Act, 1986 along with Rule 5 of the Environment (Protection) Rules, 1986. S. 3 (1) of the Environment (Protection) Act, 1986 empowers the Central Government *"to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution."* S. 3(2)(v) of the Environment (Protection) Act, 1986 further provides that such measures may include measures with respect to *"restriction of areas in which any industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards"*. Further, Rule 5 of the Environment (Protection) Rules, 1986 provides that the Central Government may take into consideration the following factors (inter alia) while prohibiting or restricting the

location of industries and carrying on of processes and operations in different areas: "the maximum allowable limits of concentration of various environmental pollutants", "the likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted", "topographic and climatic features of an area", "the biological diversity of the area, which in the opinion of the Central Government needs to be preserved", "environmentally compatible land use", "net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted", proximity to places protected "in pursuance of any decision made in any international conference", and "proximity to human settlements".

- W) It is submitted that the diversion of the Amrit Mahal Kavals for the proposed projects militates against the underlying rationale of the Environment Impact Assessment Notification, 2006. This Notification requires that all new projects (satisfying the conditions detailed in the Schedule to the Notification) "shall require prior environmental clearance from the concerned regulatory authority...before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity". The Office Memorandum issued by the Ministry of Environment and Forests, No. J-11013/41/2006-IA.II (1) dated 19 August 2010 explicitly clarifies how no activity relating to the project can be undertaken at the site unless the prior environmental clearance has been obtained: "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 environmental clearance to be obtained in respect of all the activities listed therein following the prescribed procedure. No activity relating to any project covered under the 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 shed(s) for the guard(s)."
- X) As has been detailed earlier in this petition, several of the Respondents have already commenced extensive construction and project development activity on the site that includes concrete walls, canteens, guest houses, etc. Such illegal construction has continued despite the Respondents receiving notices from the Karnataka State Pollution Control Board that point out the requirements of the environmental clearance process and the explicit prohibition against construction activity until the environmental clearance has been granted. Therefore, it is submitted that the actions of the Respondents constitute a clear violation of the Environment Impact Assessment

Notification, 2006 and the Environment (Protection) Act, 1986.

- Y) In *Himachal Pradesh v. Ganesh Wood Products*, AIR 1996 SC 149, the Supreme Court of India has explicitly pointed out that a decision making authority must give due weight and regard to ecological factors such as the environmental policy of government and the sustainable use of natural resources. The Court reiterated that a government decision that fails to take into account relevant considerations affecting the environment is invalid. In *Karnataka Industrial Areas v. Sri C. Kenchappa & Ors* (12 May, 2006, Appeal (civil) 7405 of 2000), the Supreme Court of India, while commenting on land acquisition under a special statute, recognized the importance of completing the environmental impact assessment process before the land in question is allotted or acquired. The Court held: *"(1) We direct that, in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment. (2) We also direct the appellant to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future."*
- Z) The Preamble to the Environment (Protection) Act, 1986 states that it is a legislation to provide for the protection and improvement of the environment and for matters connected therewith. In particular, the Preamble recognizes India's commitment *"to take appropriate steps for the protection and improvement of the human environment"*, and the necessity to implement *"the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property"*.
- AA) It is well settled law that a number of principles and doctrines related to the concept of sustainable development and environmental protection (including the precautionary principle, the polluter pays principle, the public trust doctrine, the principles of intergenerational equity, etc.) are a part of the domestic law in India and implied by the Environment (Protection) Act, 1986. Clarifying this point, the Supreme Court of India in *Research Foundation For Science Technology National Resource Policy v. Union of India*, 2003 (9) SCALE 303 noted: *"The legal position regarding applicability of the precautionary principle and polluter pays principle which are part of the concept of sustainable development in our country is now well settled. In Vellore Citizens' Welfare Forum v. Union of India and Ors. AIR1996SC2715, a three Judge Bench of this Court, after referring to the principles evolved in various international conferences and*

to the concept, of "sustainable development", inter alia, held that the precautionary principle and polluter pays principle have now emerged and govern the law in our country, as is clear from Articles 47, 48A and 51A(g) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986 these concepts are already implied. These principles have been held to have become part of our law. Further, it was observed in *Vellore Citizens' Welfare Forum's case* that these principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law. Reference may also be made to the decision in the case of *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Ors.* [(1996) 5 SCC 718] where, after referring to the principles noticed in *Vellore Citizens' Welfare Forum's Case*, the same have been explained in more detail with a view to enable the Courts and the Tribunals or environmental authorities to properly apply the said principles in the matters which come before them. In this decision, it has also been observed that the principle of good governance is an accepted principle of international and domestic laws. It comprises of the rule of law, effective State institutions, transparency and accountability and public affairs, respect for human rights and the meaningful participation of citizens in the political process of their countries and in the decisions affecting their lives." It is submitted that the diversion of the Amrit Mahal Kavals violates the principles of public trust, sustainable development, intergenerational equity, the precautionary principle, and the requirement of democratic public participation in developmental decision-making.

BB) It was upheld by the Hon'ble Supreme Court *In Re Natural Resources Allocation* (2012) 10 SCC 1 at paras 76, 87 and 95 that the impugned act of the public authority challenged before the court be examined in light of the Directive Principle of State Policy enshrined in Article 39(b) of the Constitution of India, dealing with distribution of natural resources for the common good of the people and the "trusteeship" principle found in the Preamble which mandates that the State holds all natural resources in the capacity of a trustee, on behalf of the people. Article 48A of the Constitution obligates the State to protect and improve the environment and to safeguard the forests and wildlife of the country. Relatedly, Article 51A (g) of the Constitution of India makes it a fundamental duty for all citizens to protect and improve the natural environment and to have compassion for all living creatures. In *Sachidanand Pandey v. State of West Bengal*, AIR 1987 SC 1109, the Supreme Court recognized that "[w]hen the court is called upon to give effect to the Directive Principle and fundamental duty [Article 48-A and Article 51-A (g)], the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind

and irrelevancies are excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions." The diversion of the Amrit Mahal Kavals and the subsequent illegal construction activities by several of the Respondents potentially result in harm to the environment, and negatively affect forest lands, sustainable modes of livelihood, and wildlife for the reasons detailed in this petition. It is submitted that the diversion of the Amrit Mahal Kavals and the subsequent illegal construction activities therefore militate against the Preamble and Articles 39(b), 48A and 51A(g) of the Constitution of India.

CC) The Hon'ble Supreme Court has recognized the principles of public trust, intergenerational equity and sustainable development as a basis for balancing ecological imperatives with developmental goals, as held in *Vellore Citizens' Welfare Forum v. Union of India*, AIR 1996 SC 2715; *MC Mehta v Kamal Nath*, AIR 2000 SC 3751; *Intellectuals Forum, Tirupathi v State of Andhra Pradesh*, AIR 2006 SC 1350; *MI Builders v Radhey Shyam Sahu*, AIR 1999 SC 2468. As has been detailed in this petition, the Amrit Mahal Kavals represent fast-disappearing, highly bio-diverse, culturally rich, and uniquely resilient and sustainable ecosystems. It is submitted that the hasty diversion of these Amrit Mahal Kavals without a careful appreciation of their significance to India's natural and human environment (and without a detailed assessment of the potential impacts of the proposed projects) violates the principles of sustainable development, intergenerational equity and public trust.

DD) In *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388 the Supreme Court held: "*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 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"*.

EE) The Supreme Court of California in *National Audubon Society v. Superior Court of Alpine County*, (33 Cal. 3d 419), a decision which has been cited numerous times by

the Supreme Court of India, observed: "*Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust....*"

FF) In light of the above pronouncements, it is submitted that the diversion of the Amrit Mahal Kavals in the instant case cannot be countenanced by the requirements of the public trust doctrine.

GG) In another case involving the public trust doctrine, the Hon'ble High Court of Karnataka, in the case of *Masay v. Bangalore City Corporation*, 2003 AIR (Kar) 468, had the occasion to consider whether the action of the Bangalore City Corporation (BCC) leasing a park or open space to a private club with certain exclusive use was valid. The Court while invoking the principle of public trust doctrine held that by virtue of Section 174 of the Karnataka Municipal Corporations Act, 1976, the Park and Open Spaces were vested with the BCC which however cast an obligation to maintain the same by preserving the basic features of a park and any action which would result in damaging the essential features would be in violation of the public trust doctrine. The observations of the Court make it clear that open spaces such as parks and tanks/lakes are community property and public access to such properties cannot be restricted in any manner. The Amrit Mahal Kavals have historically represented community property and their diversion and enclosure in the present case violated the Public Trust Doctrine.

HH) In *State of Himachal Pradesh v. Ganesh Wood Products*, AIR 1996 SC 149, at 163, the Supreme Court recognized the significance of inter-generational equity and held a government department's approval to establish forest-based industry to be invalid because '*it is contrary to public interest involved in preserving forest wealth, maintenance of environment and ecology and considerations of sustainable growth and inter-generational equity. After all, the present generation has no right to deplete all the existing forests and leave nothing for the next and future generations.*' Further, the Hon'ble Supreme Court has highlighted the principle of intergenerational equity in *A. P. Pollution Control Board v. Prof. M. V. Nayudu*, 1999 (2) SCC 718 thus: "*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 principles mentioned above wholly apply for adjudicating matters concerning environment and ecology. These principles must, therefore, be applied in full force for protecting the natural resources of this country." As has been highlighted in this petition, the Amrit Mahal Kavals constitute a unique representative sample of a natural ecosystem (that forms the habitat of at least three highly endangered faunal species) and therefore must be safeguarded for the benefit of the present and future generations through careful planning and management. The diversion of the Amrit Mahal Kavals therefore militates against the principle of intergenerational equity.

- II) The diversion of the Amrit Mahal Kavals is contrary to the precautionary principle. The Hon'ble Supreme Court in *AP Pollution Control Board v. MV Nayudu*, AIR 1999 SC 812 has 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.*" As has been indicated in this petition, the proposed projects on the diverted Amrit Mahal Kavals represent potentially high-risk activities whose impact on the grassland ecosystem have not been fully comprehended.
- JJ) In *Samaj Parivartan Samudaya v. State of Karnataka*, (2012) 7 SCC 407, the Supreme Court observed (at paragraph 44): "*Wherever and whenever the State fails to perform its duties, the Court shall step in to ensure that Rule of Law prevails over the abuse of process of law. Such abuse may result from inaction or even arbitrary action of protecting the true offenders or failure by different authorities in discharging statutory or legal obligations in consonance with the procedural and penal statutes. This Court expressed its concern about the rampant pilferage and illegal extraction of natural wealth and resources, particularly, iron ore, as also the environmental degradation and disaster that may result from unchecked intrusion into the forest areas. This Court, vide its order dated 29th July, 2011 invoked the precautionary principle, which is the essence of Article 21 of the Constitution of India as per the dictum of this Court in the case of M.C. Mehta v. Union of India: (2009) 6 SCC 142, and had consequently issued*

a ban on illegal mining. The Court also directed Relief and Rehabilitation Programmes to be carried out in contiguous stages to promote inter-generational equity and the regeneration of the forest reserves. This is the ethos of the approach consistently taken by this Court, but this aspect primarily deals with the future concerns. In respect of the past actions, the only option is to examine in depth the huge monetary transactions which were effected at the cost of national wealth, natural resources, and to punish the offenders for their illegal, irregular activities. The protection of these resources was, and is the constitutional duty of the State and its instrumentalities and thus, the Court should adopt a holistic approach and direct comprehensive and specialized investigation into such events of the past."

- KK) The diversion of Amrit Mahal Kaval of Challakere Taluk has been undertaken in gross violation of the Water Act, 1974 and Air Act, 1981, as the project proponents have commenced project activities without any compliance whatsoever with the regulatory norms, and have not even filed an application for Consent for Establishment. The 5th Respondent Karnataka State Pollution Control Board has taken cognisance of these serious violations and issued notices on the violators, but has failed to proceed further and initiate action per law. Such weak regulation and implementation of the applicable provisions of law on the part of the regulatory authorities has encouraged the violating agency to continue with a business as usual approach, to the detriment of the environment, human rights, and protection of biological diversity.
- LL) No prior consultation of any sort has at all been conducted with any of the impacted local communities, or even the elected local governments, and their prior and informed consent sought by the 2nd Respondent State of Karnataka when promoting the aforesaid industrial and infrastructural developments as is required per law. Respondents 1 to 9 have, therefore, collectively and severally failed in the discharge of their constitutionally obligatory functions of ensuring such high impact projects with irreversible environmental, social and ecological consequences are undertaken in strict compliance with the applicable provisions the Environment Protection Act, 1986, Environment Impact Assessment Notification, 2006, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution Act), 1981, Biological Diversity Act, 2002, Forest Conservation Act, 1980, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Rio Declaration, 1992, all of which mandate that public involvement in environmental decision-making, especially of the affected public, is fundamental to safeguarding the public interest and the environment.

Violation of the Constitutional 73rd Amendment (Panchayat Raj) Act, 1992, and the Constitutional 74th Amendment (Nagarpalika) Act, 1992

MM) The developments proposed in Challakere Taluk of Chitradurga district have been promoted in gross violation of the mandatory provisions of the Constitutional 73rd Amendment (Panchayat Raj) Act, 1992, and the Constitutional 74th Amendment (Nagarpalika) Act, 1992, which accord Constitutional status to the third tier of local governance – local elected bodies, *viz.*, Panchayat Raj and Nagarpalika institutions, and in particular mandate that they have to formulate District Development Plans through the District Planning Committee. The 2nd Respondent has blissfully ignored such mandatory Constitutional requirements of local governance, and has not constituted the District Planning Committee as required. Consequently, the proposed developments that will have a drastic and irreversible impact on the local communities, local governments and the district of Chitradurga as a whole is being undertaken in an undemocratic and unconstitutional manner. This is so because in the absence of the District Planning Committee, the process of evolving District Development Plans in a transparent and Constitutionally empowered democratic manner is frustrated. As is evident from Article 243ZD of the Constitution of India, the State is bound to constitute a District Planning Committee to “consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole” having regard to “matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation”, etc. and guided by Schedule 11 and 12 of the Constitution.

Limitation:

The Applicant declares that as per the National Green Tribunal Act 2010 this application is well within the prescribed time.

INTERIM RELIEF

Pending disposal of this application, this applicant prays that this Hon'ble Tribunal be Pleased to:

A. Issue an order of Injunction restraining respondents 11 to 18 from carrying on or proceeding with any construction activity on the Amrit Mahal Kavals or modifying the character of the Amrit Mahal Kavals in any manner without obtaining clearances from the appropriate authorities.

B. Direct respondents 1 to 10 to forebear respondents 11 -18 or their officers from putting up any civil construction on the Amrit Mahal Kavals during the pendency of these proceedings and the matters contained are resolved per law.

C. Direct Respondents 11 to 18 to provide access to the Amrit Mahal Kavals to the local population by removing any and all obstruction that currently impede the free movement of the pastoral communities' cattle in the aforesaid Amrit Mahal Kavals.

D. Direct respondent 2 and 9 from diverting any lands in the aforesaid Amrit Mahal Kaval or abutting landscapes, pending the disposal of this Application by this Hon'ble Tribunal.

PRAYER

For the reasons stated above, it is humbly prayed that this Hon'ble Tribunal may be pleased to direct the Respondents:

A. To maintain the Amrit Mahal Kavals free from any diversion/encroachments.

B. To remove any civil construction illegally erected on the Amrit Mahal Kavals and restore the Amrit Mahal Kavals to its earlier state.

- C. Direct respondent 01 – 10 to commission a Regional Environmental Impact Assessment along with Ecological Survey and Carrying Capacity studies to comprehend the impacts of all projects proposed in this region on biodiversity, environment, human settlements, agrarian and pastoral livelihoods, traditional knowledge and associated livelihoods, etc., prior to any decision being taken towards approval of any or all projects, current and proposed, in Chalakere Taluk in particular, and Chitradurga district in general.
- D. Direct Respondent 01 – 10 to commission a comprehensive study of the socio-economic impacts of the projects proposed on agrarian and pastoral communities of the region and also to conduct a comprehensive analysis and audit of the land-use and water use of each of the projects from the point of view of siting appropriateness, demands for lands, and such other considerations, prior to according Environmental Clearance and Consent for Establishment being granted.
- E. Direct the Respondent 01 and 02 to develop and implement comprehensive policies for the protection of grasslands ecosystems as biodiversity hotspots and pastoral lands, with particular regard to the wise use of these natural resources, and associated traditional knowledge and livelihoods.
- F. Direct Respondent 01 to initiate effective action to comprehensively study the status of grassland ecosystems across India with the view of ensuring their conservation and wise use for posterity as wildlife habitats and as public commons.
- G. Direct Respondent 02 to immediately take requisite steps to enable recognition of rights of local tribal, other forest dwelling and forest dependent communities as required per the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
- H. Direct Respondents 02 and 08 to undertake a comprehensive study of the biodiversity of the Amrit Mahal Kaval of Chalakere Taluk, Chitradurga District, and if found

necessary take steps to declare the same as a Biodiversity Heritage Site as per the provisions of the Biological Diversity Act, 2002.

- I. Direct Respondent 06 to take steps against encroachment and diversion of Amrit Mahal Kaval areas across the State of Karnataka in accordance with applicable provision of law, in particular the Karnataka Forest Act, 1963, the Forest (Conservation) Act, 1980 and the directions of the Hon'ble Supreme Court in T. N. Godavarman Thirumulkpad v. Union of India (AIR 1997 S.C. 1228) case.

- J. Direct Respondent 02, State of Karnataka, to constitute District Planning Committees as is mandated per Article 243ZD of the Constitution of India to "consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole" having regard to "matters of commons interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation", etc. and guided by Schedule 11 and 12 of the Constitution.

Signature of the Applicant

SIGNATURE OF THE APPLICANT'S COUNSEL

VERIFICATION

I Arthur Pereira, S/o Late Thomas Pereira, representing the applicant herein, do hereby verify that the contents of paras 1 to 37 are true to the best of my Knowledge and grounds A – AJ are based on legal advice and that we have not suppressed any material fact.

Date : Mangalore

Place : 16.02.2013

Signature of the Applicant

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI**MEMORANDUM OF APPLICATION**

(Under Section 18(1) read with Sections 14, 15 of National Green Tribunal Act 2010)

Application No.....of 2013

Between:

Environment Support Group
1572, 36th Cross, Intermediate Ring Road
Banashankari II Stage
Bangalore 560070
Represented by its Trustee Mr. Arthur Pereira

...Applicants

AND

The Union of India
Rep. by its Secretary to Government
Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex
Lodhi Road, New Delhi and 17 Others

... Respondents

AFFIDAVIT

I, Arthur Pereira, S/o late Thomas Pereira, aged about 55, residing at Karambar, Bajpe Post, Mangalore 574142, now in Mangalore, solemnly affirm and state :

1. That I am a Trustee of the Applicant trust in the above mentioned application and as such am conversant with the facts and circumstances of the case and am competent to swear to this affidavit.
2. That I have read the contents of the accompanying application and the contents of the same are true as per the verification.
3. That the Annexure/s filed along with the application are the true copies of their respective originals.

X

DEPONENT

VERIFICATION

Verified at Mangalore this the 16th day of February, 2013 that the contents of the present affidavit are true and correct and nothing material has been concealed there from.

X

DEPONENT

BEFORE THE NATIONAL GREEN TRIBUNAL**MEMORANDUM OF APPLICATION**

(Under Section 18(1) read with Sections 14, 15 of National Green Tribunal Act 2010)

Application No.....of 2013**Between:**

Environment Support Group
 1572, 36th Cross, Intermediate Ring Road
 Banashankari II Stage
 Bangalore 560070
 Represented by its Trustee Mr. Arthur Pereira

...Applicants

AND

The Union of India
 Rep. by its Secretary to Government
 Ministry of Environment & Forests and Others

... Respondents

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T.MOHAN & S.DEVIKA
COUNSEL FOR THE APPLICANT