Comments and Observations on the Fact Finding Committee Report set up by the Hon'ble National Green Tribunal (South Zone) at Chennai in Applications No. 6/2013 (Applicant Leo F. Saldanha) and 12/2013 (Environment Support Group)

19th August 2013

The undersigned ecologists working with Ashoka Trust for Research in Ecology and Environment, Bangalore which focuses on applied science through research, education and action that influence policy and practice on conservation of nature, management of natural resources, and sustainable development, wish to state on record certain observations on the Report of the aforesaid Fact Finding Committee submitted to the National Green Tribunal regarding the diversion of the Amrit Mahal Kaval in Challakere, Chitradurga District, Karnataka. At the outset we wish to state that the report falls woefully short in its attempt at compiling the ecological, social and economic aspects of the proposed diversion of the Amrit Mahal Kavals for a range of developmental activities proposed.

We express our objections to the diversion of these grasslands for the proposed activities and strongly implore the Hon'ble National Green Tribunal to set aside permissions granted for the diversion of the Amrit Mahal Kavals and direct the State and Union Governments to protect them for posterity for the following reasons:

1. Inadequate information on biodiversity richness and ecology calls for the application of precautionary principle

The report repeatedly makes the observation that comprehensive information on biodiversity richness and the ecology of the Kavals is not available. In general, awareness of the biodiversity richness of scrub or grassland areas is extremely limited in the public discourse. Such lands in arid or semi-arid areas are still viewed as wasteland after the colonial tendency to label them so given that they did not contribute to the exchequer by way of agricultural and forest revenue. However, there is now a rich body of literature from different disciplines, including ecology and environmental history, which shows that landscapes such as the kavals support unique ecosystems, and are symbiotic with human use. Grassland areas have been declared as protected areas in parts of the country in recognition of their biodiversity value.

Studies also show the crucial role of certain forms of human use in constituting and maintaining pastoral landscapes. The work of the historian Laxman D. Satya on the erstwhile pastoral landscape of the colonial province of Berar (present-day central Maharashtra), and the more recent work of the historian Bhangya Bhukya on the nomadic-pastoral Lambada community brings out the linkage between pastoral landscapes and human dependence. Consequently, there is an urgent need to carry out studies on the biodiversity of the kaval landscape, and to recognise that the element of human use is integral to the form in which they exist. In other words, it is important to recognise that the kavals in their present form exist because they have been used in particular ways by humans over a period of at least a few centuries. Thus, if the kavals were to be viewed in their entirety as an ecological landscape, the presence of villages on the periphery with dependence upon the kaval lands would have to be viewed as a continuous ecosystem. This implies that any change in either the human use-pattern of the kavals, or any damage to biodiversity, would affect

both the human as well as non-human natural component of this ecosystem. Consequently, comprehensive information on biodiversity and human use of the kavals needs to be gathered prior to any decision on diversion of the lands for other activities. For the time being, the Precautionary Principle ought to be applied and all activities on the kaval lands by the beneficiaries should cease until such comprehensive information is gathered on the basis of rigorous research studies. In the absence of even a rapid assessment survey in the Varavu and Ullarthi kavals, and only a rapid assessment cited for Khudapura kaval, there is an urgent need of assessment of richness, density and populations of bio-diversity by an independent agency before the land might even be considered for diversion.

Furthermore, studies on flora and fauna as well as hydrology of the area are required. The proposal of increasing the green cover of the area by planting trees could be devastating to this area's biodiversity (which includes species such as the black buck, Eurasian eagle-owl and Indian fox). Introduction of exotic species would also threaten local plant populations which are used by wildlife as well as people for various purposes.

2. Failure to recognise violation of the Forest Rights Act, 2006.

The section entitled *Consent from Forest Rights Committees* appears to betray a lack of understanding of the Forest Rights Act (FRA), 2006. The committee's own conclusion seems to be based on the submission by the PCCF, Karnataka Forest Department (Annexure 18, p. 7), that consent from Forest Rights Committees is not required. However, a proper reading of the FRA suggests that there is a strong case for the role of the Forest Rights Committee and the Gram Sabha in the 62 villages concerned in claiming forest rights over the kavals.

For instance, section 2(a) of the FRA makes an explicit reference to the seasonal use of landscapes by pastoral communities. Section 2(d) of the Act clearly suggests that forest land refers to 'land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks". This section, and its relevance to the Challakere case, needs to be cross-referenced to the extensive research by Shrinidhi and Lele (2001) on forest tenurial regimes in the Karnataka Western Ghats. The authors state that the Amrut Mahal Kavals are forest-cum-grasslands that represent a largely state-controlled tenurial regime but serve as a source of cattle-breeding services and fodder for local communities (see p. 31; also see p. 12 and 28). Consequently, the relevance of the FRA follows as a corollary, and local communities appear to be entitled to rights especially under the following sections:

3(b): which refers to community rights such as nistar, by whatever name called, including those used in erstwhile princely states…;

3(c): which applies to right of ownership and access to minor forest produce (to the dependence upon which of 28-30% of the local communities finds a categorical mention in the fact-finding committee report, p. 43)

3(d): rights to grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

3(k): in the context of traditional knowledge of medicinal plants and healing practices dependent upon forest resources;

3(l): which may apply to the presence of religious places of local communities in the kavals.

3. Validity of assurances given by different institutions

The validity of the assurances given by the different institutions to the fact-finding committee is not clear. Even if the Hon'ble Tribunal were to incorporate these assurances in its order, it is not clear how these assurances will be operationalised. In particular, how will the kaval-dependent people be able to demand enforcement since the assurances have not been given to a body that represents them? A primary issue is the validity of the unilateral diversion of a vast quantity of land upon which a large number of people depend upon critically for their livelihood. Second, given the sensitive character of the proposed projects, and the inter-generational consequences of nuclear, defence-related, and industrial activities, it is even more important for the people of the villages to be taken into confidence before a decision on the diversion of the land is taken. In the light of these fundamental issues at stake, taking at face value the assurances given by the different institutions indicate only minor tinkering with the status quo with the uncertain promise of future enforcement, and continue to grossly undermine the larger question of social and environmental justice.

4. Issues of concern raised by villagers in connection with non-availability of grazing land and fodder

The report suggests that the diversion of land is justified because some land is still available for grazing, harvest of minor forest produce, etc., and that the Chief Secretary has assured that the remaining lands will not be diverted. However, assuming that the actual land available tallies with the figures quoted in the report (p. 74), the quantum of land now remaining is only one-fourth of the original extent (3,551 acres out of 13,074 acres, including gomala land). Not all of this land may have a supply of fodder or be suitable for the various other livelihood activities that currently appear so essential to the local people. Hence, it is not clear how the livelihoods of 62 villages can be supported following the drastic reduction in the land available to them. A conclusion to this effect can be drawn only after a thorough and rigorous process of enquiry. There is no indication that the committee has applied its mind in this regard.

Furthermore, the assurances given by the different beneficiaries are qualified assurances. For example, annexure 21 shows that the IISc agrees to allow grazing on its land only during drought. The Registrar's letter states that a formal declaration of drought must be made by the District/Taluk administration for the IISc to allow such access. It is not an uncommon practice in our country for state governments to refrain from or delay making declarations of drought if there are political costs associated with such announcements. Thus, the beneficiaries' implicit refusal to allow access to village cattle pending a formal announcement of drought suggests a lack of sensitivity to the urgency of local requirements, and appears to be a vague and uncertain promise. In any case, as pointed out earlier, the validity of the assurances is superseded by larger questions relating to a process of due democratic consultation with local people.

5. Ecological impact of the construction of walls

The construction of walls not only impedes access to graziers and farmers who are separated from their agricultural lands but also has serious consequences for wildlife. Species including blackbuck cannot freely traverse the landscape in the presence of the long walls that are being built. These obstructions to ecological dispersal and movement may induce further changes in the occurrence and abundance of plant, animal and insect species, and can be potentially harmful. The erection of physical barriers, which is

inevitable if the kaval lands are parcelled out, will have serious consequences for biodiversity. It is all the more important, therefore, for a comprehensive study of biodiversity to be carried out across the kaval lands. Merely calling for the beneficiaries to ascertain floral and faunal diversity and density, and conserve the biodiversity on their premises is not enough, and amounts to skirting the serious ecological consequences of their actions.

These are only some of the the problems that the undersigned have addressed which reveal the poor quality of the Report of Fact Finding Committee. A detailed analysis is sure to reveal far greater weaknesses in the current levels of assessments of the environmental and social impacts of the proposed projects.

With this in view, we submit to the Hon'ble National Green Tribunal that the decision to divert the Amrit Mahal Kaval be set aside for the aforesaid reasons and a direction be issued to appropriate authorities to protect these ecologically sensitive grassland ecosystems for posterity in acknowledgement with the Principle of Intergenerational Equity, Precautionary Principle, the Public Trust Doctrine and various laws and policies that seek to protect such habitats.

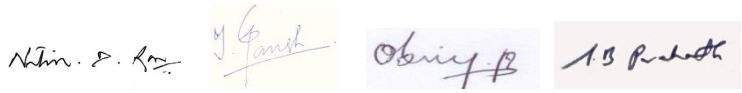
References:

Bhukya, B. 2010. Subjugated nomads: The Lambadas under the rule of the Nizams. Hyderabad: Orient Blackswan.

Satya, L.D. 2004. Ecology, colonialism and cattle: Central India in the nineteenth century. New Delhi: Oxford University Press.

Shrinidhi, A.S. and S. Lele. 2001. Forest tenure regimes in the Karnataka Western Ghats: A compendium. ISEC Working Paper.

Sincerely



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