Implementing the Report of the World Commission on Dams: A Case Study of the Narmada Valley in India

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IMPLEMENTING THE REPORT OF THE WORLD COMMISSION ON DAMS: A CASE STUDY OF THE NARMADA VALLEY IN INDIA

SHRIPAD DHARMADHIKARY*

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INTRODUCTION

This essay examines the implications of the recommendations of the World Commission on Dams’ Report (“Report”) for the Narmada Valley projects in India. It examines the possible outcomes of a multi-stakeholder-based decision-making process of reviewing the water and energy developments as recommended by the World Commission on Dams (“WCD”). Further, it explores the various initiatives already taken in the Narmada Valley where an intense struggle has been occurring over the past fifteen years. Specifically, this essay focuses on the initiatives taken in the Narmada Valley and how such initiatives fit within the WCD Report recommendations. Many of the previous initiatives pertaining to the large dams in the Valley are along the directions and recommendations provided for in the WCD Report. An examination of these initiatives allows for the opportunity to explore the implementation of the Report in the Narmada Valley. This analysis shows that the net result of implementation would be positive, leading to the elimination of inferior dams. It would also ensure that future dams are socially and
environmentally sound, equitable, and viable, and that there would be more room for the consideration of other alternatives. The implementation of the WCD Report’s recommendations would also alter the contribution, the say, and the participation of various actors who take part in the decision-making process.

This essay further examines the critiques of the Report that have been voiced by various agencies, particularly the dam-building establishment in India, considering the validity of these criticisms in light of the Narmada Valley case study. The Narmada Valley initiatives demonstrate that the major apprehension – that the process recommended by the WCD would be lengthy and cumbersome – is unfounded. The WCD recommendations’ roots are in countries such as India, whereas the criticism stems from the belief that the WCD’s recommendations relate to practices of “developed” countries. The essay also examines the source of the India dam building establishment’s vehement criticism of the WCD Report, demonstrating that one of the key reasons for this criticism seemingly arises from the fact that WCD recommendations would shift the power and decisions relating to large dams away from the dam building establishment.

“Our genesis, work process and implications of this Final Report are by nature quite political. Our mandate involves the most precious element on earth, and that, of course, involves power: who wields it, how to share it, which ways the state may better balance it . . .”

“We are a Commission to heal the deep and self-inflicted wounds torn open wherever and whenever far too few determine for far too many how best to develop or use water and energy resources. That is often the nature of power, and the motivation of those who question it.”

The struggle surrounding large dams all over the world is in essence the struggle of the have versus the have-nots. The struggle has taken place since time immemorial. It is a struggle in search of

2. Id.
justice for the downtrodden, the struggle for a voice by the voiceless, and for power by the powerless. Those fighting the insatiable and unsustainable exploitation of the environment have added a new dimension. The struggle against unsustainable exploitation of the environment is a resistance of the powerless against the powerful. An understanding of the struggles surrounding large dams elucidates vehement reactions to the WCD Report and provides an understanding of what implementation of the WCD recommendations would entail.

I. BACKGROUND

A. The World Commission on Dams and Its Report

Nelson Mandela released the WCD Report in London on November 16, 2000. The report was followed by a series of regional launches in various parts of the world. The release of this report concluded the Commission’s two and a half years of efforts. The WCD’s process has been unique in the annals of modern developmental conflicts.

The struggle against large dams is one of the most visible and dramatic of the conflicts surrounding the environmental and social impacts of development. It is at once intensely local and global. For example, the struggle in the Narmada Valley in India has reached across the world. Various groups, organizations, and individuals from all over the globe are involved in this fight as deeply as the people living within the Valley. Similar struggles against large dams are taking place in other parts of India, as well as Australia, Brazil, France, Thailand, and the United States. Even in parts of the globe where dissent is severely discouraged, strong campaigns and protests against large dams continue to occur.

Dams are big business and command vast natural resources. Huge vested interests are involved in pushing dams to be built. Large dams have enormous social and environmental impacts, the nature and extent of which is neither fully studied nor acknowledged, even in today’s highly technologically advanced world. Serious doubts have arisen about the economic and financial viability, efficacy, and benefits of large dams. As a result, the fights around large dams have
been some of the most bitter and polarized ones.\(^3\)

It is under these conditions that the WCD began its mission. Since the Commission was composed of representatives from all sides of the debate, there was an inherent danger that existing conflicts and polarization would affect the Commission’s work.\(^4\) In fact, the WCD’s most significant accomplishment has been its ability to transcend the polarization and produce a unanimous report.\(^5\) This unanimity is what gives the Report its legitimacy, apart from its solid knowledge base, and its extensive consultations with a wide range of interested and affected people. All members of the Commission—dam builders, planners, operators, equipment suppliers, dam opponents, environmentalists, and academics—have unanimously agreed on the Report. This is what makes the report significant and too important to ignore.

**B. REACTIONS TO THE REPORT**

The many favorable reactions to the Report, including those from industry and financial institutions, are attributable to the agreement between commissioners representing diverse perspectives. A section of the dam building establishment, however, has come forward with vehement and angry reactions, outright rejections, and even allegations of conspiracy. The WCD Internet site and the compact

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3. This essay does not deal with the critique of large dams. In fact, neither does it critically analyze the WCD, its process, or the Report. These are vast topics, whereas the focus of this essay is on the one limited aspect outlined above. In fact, readers are assumed to have a certain amount of familiarity regarding the issues surrounding the large dams controversy, the WCD, and its Report.

4. Some writers, including the WCD itself, often refer to the “dams debate.” I find that the word “debate” is severely limiting in this context. More accurately, a war is taking place between the haves and have-nots. “Struggles” or “fights” are more appropriate words.

5. One of the Commissioners, Medha Patkar of the Narmada Bachao Andolan added a note to the Report, simply called “A Comment.” The Comment, however, is not in the nature of a dissent note. She signed the Report as have all the other Commissioners. See WORLD COMMISSION ON DAMS, DAMS AND DEVELOPMENT: A NEW FRAMEWORK FOR DECISION-MAKING, (Earthscan 2000) at 321-22 (setting out several issues that the author believed were “fundamental” but never the less “missing or not given the central place they deserve [in the report]”) [hereinafter WCD REPORT].
disc issued by the WCD cover the important reactions.6

A review of some specific reactions will be presented later in this essay. A brief summary of the criticisms is presented here. The World Bank ("Bank") is avoiding acceptance of the Report by taking refuge behind the explanation that it will have to look at the response of its shareholders. This response is typical of the Bank, which is loath to accept findings of its own commissions where their recommendations are contrary to its worldview.7

The dam builders and their main organizations, International Commission on Large Dams ("ICOLD"), International Hydropower Association ("IHA"), and International Commission on Irrigation and Training ("ICID"), have strongly criticized the Report.8 Their concerns are summarized as follows:

The process that the WCD recommends is "cumbersome" and such a cumbersome process will stall future dam building;

The WCD recommendations emerge from the "developed" countries and, thus, are suitable only for these countries;

The recommendations will create considerable uncertainty about future projects, which could cause private developers and financiers to lose interest in dam projects, resulting in the elimination of water and energy projects altogether;

The WCD Report is negative in its approach. It embodies an "anti-dam" bias and largely ignores the positive contributions of dams;

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6. This essay is not meant to provide a detailed analysis of the various criticisms and comments on the Report. The comments of the major players are examined in this essay to bring out the approach of these agencies to the Report and its implementation.

7. For example, the reaction of the Bank was similar in the Morse Committee case, which the Bank had set up in 1991 as an Independent Review of the Sardar Sarovar Project. The Morse Report was a strong indictment of the project and called on the Bank to step back from the project. The Bank refused. In fact, it sent another in-house mission which tried to downplay and dilute the Morse Report's main findings. While the Morse team took about ten months to produce the report (many of which were spent in the field), the Bank's Mission did its work in fifteen days.

8. It should be pointed out, however, that some of these reactions are more nuanced than others. For example, the reaction of the IHA is much more introspective.
The WCD guidelines are not universally applicable, and as such, they may prevent beneficial projects from commencing. There is a need to develop "realistic" guidelines.

Some of the strongest and strident reaction comes from countries involved in large-scale dam building, such as India, China, and Turkey. Some critics in these countries have even alleged that the WCD is a conspiracy of the developed countries that have developed all their water resources and do not want under-developed countries to do the same. Some also allege that the WCD is a conspiracy of the promoters of thermal and nuclear power. Some of the key members of the Indian dam building establishment, most notably the current President of the ICOLD, have tried to suppress – if not sabotage – the dissemination of the WCD Report in India, which they boast as an achievement.9

"We were able to get the WCD meeting scheduled in India for February 12, 2001, basically for propaganda purposes, canceled . . . Acceptance of the WCD Report by funding agencies, especially the World Bank, scheduled on February 15, 2001, did not succeed by WCD in spite of their high profile."10

The endeavor in this essay is not to respond to these criticisms, but to explore how the actual implementation of the WCD Report would occur in a real-life case. In the process, this essay will examine whether the above criticisms hold true. We look at the case of the Narmada Valley projects in India.

II. THE NARMADA VALLEY DEVELOPMENT PROJECTS ("NVDP")

The Narmada is the longest westward flowing river in India. It begins at Amarkantak in the Maikal ranges in Central-East India and flows over 1,300 kilometers to empty into the Arabian Sea. The

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9. Letter from C.V.J Verma, President of the ICOLD, to Shri Navlawala, Adviser to the Water Resources Planning Commission, Government of India (Mar. 22, 2001) (discussing the conference that was held in Delhi, February, 12, 2001, where the ICOLD, IHA, and ICID first came together) (on file with author). Shri Navlawala is now the Secretary at the Ministry of Water Resources with the Government of India.

10. Id.
ambitious NVDP proposes to build 30 large, 135 medium, and over 3000 small dams on the Narmada and its tributaries. All of these, except the Sardar Sarovar Project, are in the state of Madhya Pradesh ("M.P."). The Sardar Sarovar Dam is being built in Gujarat but its submergence will also extend to the states of M.P. and Maharashtra.\(^\text{11}\)

The preliminary investigations of the Narmada Valley for “development of the Narmada Basin” were taken up in 1949. In 1955 a study was conducted to assess the hydroelectric potential of the Narmada basin. The study found sixteen sites in the Narmada basin with the potential of generating hydroelectric power. Project reports for a few major projects (Broach project in Gujarat and Narmada Sagar (Indira Sagar), Bargi, and Harinphal projects in Madhya Pradesh) were prepared during the period of 1959-1965. The Broach Irrigation Project, precursor of the Sardar Sarovar Project, as cleared by the Planning Commission in August 1960, was contemplated at a height of a full reservoir level (“FRL”) of 162 feet.\(^\text{12}\)

The Narmada Valley projects have been mired in interstate controversies since their inception,\(^\text{13}\) mainly regarding the issue of sharing of the waters between Gujarat and M.P., and the height of the Sardar Sarovar dam. Finally, a Tribunal was established under the \textit{Inter State Water Disputes Act} in 1969, and it delivered its Award in 1979. Among other things, this Award determined allocation of Narmada waters between various states, fixed heights of the Sardar Sarovar and Indira Sagar dams, and gave orders for the resettlement and rehabilitation of the people to be affected by submergence of the Sardar Sarovar. It placed on record the agreements of contending party states about the water yield of the river at 28 Million Acre Feet ("MAF") and allocated this among the four contending states. A vast range of benefits are projected from these projects, however, the

\(^{11}\) See infra Table 1 for the lists and basic details of these projects.

\(^{12}\) See History of Development on the Narmada Basin at http://www.mp.nic.in/nvda/history.htm. (explaining how the Narmada project came to being). This is the web site of the Narmada Valley Development Authority, Government of Madhya Pradesh.

\(^{13}\) The States included the three riparian states including Gujarat, Madhya Pradesh (M.P.), Maharashtra, and the non-riparian state of Rajasthan. Recently, the state of M.P. has been split into two states – M.P. and Chattisgadh.
projects will result in a mass displacement of people, the majority consisting of tribals, and severe environmental impacts. Serious doubts have been raised about the quantum and equitable distribution of the benefits, and the overall economic and financial viability of the projects.\footnote{14}

Since 1985, the people of the Valley have waged an intense struggle under the name of the Narmada Bachao Andolan ("NBA"), the Struggle to Save the Narmada. The battle began in 1985 as an organization of the people affected by the Sardar Sarovar project.\footnote{15} Over the years, the people affected by other dams in the Valley have also joined the organization including those from the Bargi, the Goi, Indira Sagar, Jobat, Maheshwar, Man, Omkareshwar, Tawa and Veda projects.\footnote{16}

\footnote{14. This essay is also not meant to be a critique of the Narmada Valley projects. \textit{See generally} Friends of Narmada at http://www.narmada.org (compiling information on the social, environmental, and economic impact of constructing large dams on the Narmada River).

\footnote{15. The term "affected" people will be used generally, but includes "people to be affected."

\footnote{16. In the areas affected by the Sardar Sarovar, other groups have also been working with some of the affected villages in Gujarat, such as the ARCH Vahini. In M.P. and Maharashtra, other groups are also working within some of the affected villages. For instance, in M.P., Khedut Majdoor Chetna Sangathan works in some Sardar Sarovar affected villages; Tawa Bandh Visthapit Sangh works in some Tawa affected villages; and in Maharashtra, the Punarvasan Sangharsh Samiti works in the resettlement sites of Sardar Sarovar. However, these organizations have been working in close collaboration with the Narmada Bachao Andolan, except for a few of them, such as the ARCH Vahini, which differs in perspective from the NBA. The Narmada Bachao Andolan remains the most widespread and active organization and movement in the Valley.}
**TABLE 1: LARGE DAMS IN THE NARMADA VALLEY**

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name of the Project</th>
<th>Estimated Cost (in Crore')</th>
<th>Proposed Command Area (in Lakh, Hectares)</th>
<th>Installed Capacity (in MW)</th>
<th>Status/Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Upper Narmada</td>
<td>58.55</td>
<td>0.1280</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Raghavpur</td>
<td>26.64</td>
<td></td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Rosra</td>
<td>32</td>
<td></td>
<td>35</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Singarpur</td>
<td>165.72</td>
<td></td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Upper Budhner</td>
<td>59.80</td>
<td>0.0949</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Halon</td>
<td>45</td>
<td>0.1173</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Matiyari</td>
<td>30</td>
<td>0.1011</td>
<td></td>
<td>Partly Completed/Dam completed/Reservoir filled</td>
</tr>
<tr>
<td>8</td>
<td>Bargi</td>
<td></td>
<td></td>
<td></td>
<td>Only dam completed/Reservoir filled</td>
</tr>
<tr>
<td></td>
<td>A. Left Bank Canal</td>
<td>565.60</td>
<td>90</td>
<td></td>
<td>In progress</td>
</tr>
<tr>
<td></td>
<td>B. Bargi Diversion</td>
<td>995.20</td>
<td>4.3700</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

17. See Samagra Vikas, Narmada Valley Development Authority, Bhopal, 1997 (providing the statistics for the table below with the exception of Sardar Sarovar). The cost estimates are hopelessly outdated and undervalued.

18. Crore indicates ten million.

19. Lakh signifies one hundred thousand.
<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>NAME OF THE PROJECT</th>
<th>ESTIMATED COST (IN CRORE$^\text{18}$ RUPEES)</th>
<th>PROPOSED COMMAND AREA (IN LAKH$^\text{19}$ HECTARES)</th>
<th>INSTALLED CAPACITY (IN MW)</th>
<th>STATUS/REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Ataria</td>
<td>30.16</td>
<td>0.1295</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Chinki</td>
<td>76.57</td>
<td>0.7082</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Sher</td>
<td>93.23</td>
<td>0.6476</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Macharewa</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Shakker</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Sitarewa</td>
<td>4.00</td>
<td>15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Dudhi</td>
<td>42.36</td>
<td>0.5060</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Barna</td>
<td>18.90</td>
<td>0.5480</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Tawa</td>
<td>113.00</td>
<td>2.4690</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Kolar</td>
<td>120.00</td>
<td>0.4510</td>
<td>Partly Completed/ Dam Completed/ Reservoir filled</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Morand</td>
<td>64.10</td>
<td>0.4800</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Ganjal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Sukta</td>
<td>12.60</td>
<td>0.1660</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Punasa Lift</td>
<td>572.98</td>
<td>0.3230</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Indira Sagar</td>
<td>2167.67</td>
<td>1.14100</td>
<td>1000</td>
<td>In Progress</td>
</tr>
<tr>
<td>24</td>
<td>Omkareshwar</td>
<td>788.03</td>
<td>1.2900</td>
<td>520</td>
<td>In Progress</td>
</tr>
</tbody>
</table>
III. WCD AND THE NARMADA VALLEY PROJECT

The Narmada Valley projects provide a rich example that facilitates studying the implementation of the WCD for several reasons. The projects span an entire basin quite large in size, approximately 100,000 km². The projects encompass every size ranging from the mega dams to the micro dams. Projects include irrigation, hydro, water supply, and multipurpose schemes. Some of the projects are completed, some ongoing, and some are still on the drawing boards. The projects include those that are publicly owned and developed as well as the private BOOT type. A fair amount of information is available in the public domain on these projects (thanks largely to the popular struggle’s concerted campaign). Lastly, there is a basin-wide peoples’ struggle in the Narmada Bachao Andolan.

We will now directly look at what the WCD Report implies for the

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20. The thirtieth large dam project, Sardar Sarovar, is in Gujarat. All of the remaining projects are in M.P.

21. BOOT Contracts are “Build Own Operate Transfer” agreements.
Chapter 7, "Enhancing Human Development," provides the framework on which the WCD bases its way forward, and also describes the framework's origin. Chapter 8 "Strategic Priorities – A New Policy Framework for the Development of Water and Energy Resources" is a crucial chapter that gives the seven strategic priorities ("SPs") which the Commission believes should guide all future water and energy resource development. Each SP is set forth with a "Key Message" and accompanying "Policy Principles" ("PPs") which map out how the SPs may be realized in practice. Each SP is also accompanied by a "Rationale" for the SP.

Chapter 9 provides detailed Guidelines and Checklist Criteria for achieving the SPs. These checklists and guidelines correspond to five stages of the project planning from Needs Assessment to Project Completion and Operation.

Of particular importance is the section titled "A Special Case: Dams in Pipeline" in Chapter 9. We will focus only on the major actions that need to be undertaken to implement the WCD Report in the Narmada Valley.

A. SEVEN STRATEGIC PRIORITIES AND THE ACTIONS

The Seven Strategic Priorities of the WCD Report include the following:

Gaining Public Acceptance;
Comprehensive Options Assessment;
Addressing Existing Dams;
Sustaining Rivers and Livelihoods;
Recognizing Entitlements and Sharing Benefits;
Ensuring Compliance;

22. See WCD REPORT, supra note 5, at 195.
23. See id. at 213.
24. See id. at 213.
25. See id. at 259.
Sharing Rivers for Peace, Development and Security.  

The Report recommends certain specific actions to achieve these strategic priorities. From the SPs and the PPs given in the Report, we can summarize, under various SPs, the following major actions necessary for the implementation of the Report's recommendations.

1. SP 1: Gaining Public Acceptance

Implementation of this Report would require a process by which all stakeholders are identified and a Stakeholder Forum ("SF") is formed. This SF would then be given all the information about the projects and would discuss and negotiate key decisions on the projects. The process has to result in demonstrable acceptance of key decisions. In particular, tribal people, who constitute a significant portion of the people in the Valley, would have to give their free, prior, and informed consent to the specific projects.

2. SP 2: Comprehensive Options Assessment

The SF would have to assess the needs that the projects seek to meet. This is an inversion of the normal process whereby the project planning starts, not by looking at the needs, but by looking at where the suitable dam sites are and determining how to maximize the amount of water that can be impounded. The SF would then have to examine alternative means of achieving these needs, as well as the alternative means by which the water and energy resources of the Valley can be utilized. Of particular importance is Policy Principle 2.4, which states that "planning must give priority to making existing water, irrigation, and energy systems more effective and sustainable before taking a decision on a new projects." There are already a number of "completed" projects in the Narmada Valley that are

26. Id. at 305.
27. See id. at 215. It would be useful for readers to examine at the WCD Report and, in particular, Chapter 8 discussing the Strategic Priorities and the Policy Principles. For the want of space, this essay does not list all the PPs here.
28. See WCD REPORT, supra note 5, at 221 (arguing for a comprehensive assessment of alternatives to dams).
29. Id. at 224.
vastly under-performing. Priority in the options assessment will have
to be given in making full use of these projects. Possibilities are open
that a dam may or may not be the chosen option.

3. **SP 3: Addressing Existing Dams**

This SP requires introducing proper monitoring and evaluation
processes for existing dams in which all stakeholders are represented.
Existing dams are also evaluated for performance and any under-
utilized or unrealized potential is the first priority. People displaced
by existing dams who are not resettled need to be resettled. The
environmental impacts of existing dams need to be identified and
addressed. Both of these are of major importance in the Narmada
basin since there is a legacy of displacement and unresolved
environmental problems due to existing dams.

4. **SP 4: Sustaining Rivers and Livelihoods**

The requirement of this SP is to assess the basin-wide study of the
ecology, economy, and culture, with emphasis on the linkages across
the basin. This introduces the very important criteria for evaluating
any option, namely that of prioritizing the need to avoid impact in
the framework of a precautionary approach. It also requires
examination of the need to maintain minimum downstream flows. To
meet this requirement, the operation of all the existing dams in the
Valley must be reworked. New dams (if agreed upon through the
process of options assessment) should have this sustainability
approach incorporated into their design. This recommendation is
particularly relevant for the Sardar Sarovar dam, which is the
terminal project in the Narmada Valley, about 150 kilometers from
the mouth of the river.

30. See id. at 225.

31. See id. at 234 (suggesting that it is necessary to preserve rivers, watersheds,
and their ecosystems).

32. See Rio Declaration on Environment and Development, U.N. Conference
(1992), reprinted in 31 I.L.M. 874 (1992) (describing the need to prevent
environmental damage, even when the exact extent of the damage is scientifically
uncertain).
5. **SP 5: Recognizing Entitlements and Sharing Benefits**[^33]

This SP requires that every person affected by any part of the project be considered as the “Project Affected People,” not just those affected by submergence. The resettlement packages are to be negotiated and formally agreed upon by the affected people, and are to be legally binding. Affected people should also have the first rights to project benefits.

6. **SP 6: Ensuring Compliance**

This SP requires a compliance plan with pre-established criteria be laid down in advance. The compliance monitoring has to be done transparently by an independent agency. The last SP refers to transboundary rivers and is not immediately relevant in the case of the Narmada Valley.

**B. SPECIAL CASE: DAMS IN THE PIPELINE**

A criticism of the NVDP is that the project has been in progress for many years. Introducing the above steps would cause a fundamental re-opening of all the projects, undoing years of planning. The WCD itself has taken into consideration such cases, and has a separate section in Chapter 9, titled “A Special Case: Dams in the Pipeline.” The following quotes from this section are relevant here:

Currently a large number of dam projects are at various stages of planning and development. While acknowledging that delays in implementation can cause unacceptable delays in delivering intended benefits, the WCD Knowledge Base has demonstrated that it is never too late to improve outcomes. On this basis, the Commission proposes an open and participatory review of ongoing and planned projects to ascertain the extent to which project formulation can be adapted to accommodate the principles outlined in this report.[^34]

[^33]: See WCD REPORT, supra note 5, at 240 (arguing on behalf of the recognition of affected person’s rights to benefit from the projects).

[^34]: Id.
Stakeholder groups should have an opportunity to define the scope of the review and to propose changes in keeping with the Commission’s recommendations.\(^{35}\)

This requires that the SF carry out a comprehensive exercise, first agreeing to and defining the scope of the review, and then actually carrying out the review of ongoing and planned projects.

**IV. OUTCOMES OF THE IMPLEMENTATION**

The above process, taken together, would be nothing short of a fundamental revisit of the entire NVDP. It not only means a comprehensive review of development of the Valley, including ongoing projects, but it also involves a radical re-balancing of the say that various groups have in the process, and the redefining of the criteria for evaluation of alternatives. It is precisely these possibilities that have led the Indian Dam establishment to vehemently and furiously rise in condemnation of the Report.

However, there are several important issues that need to be examined: Is the WCD Report advocating something entirely new for the Valley? How would the scenarios in the Narmada Valley materialize if the above process is actually carried out? Would the results be positive or negative? How valid do the criticisms of the Report turn out during the entire process?

Interestingly, several initiatives have begun in the Narmada Valley that cover many of the WCD Report recommendations. Most of the initiatives are the result of the people’s struggle in the Valley, and none have reached a logical conclusion. Yet, these initiatives are important from two perspectives. First, these initiatives reveal what the implementation of the Report would look like. Second, the initiatives demonstrate that the Report’s recommendations are not a grand conspiracy of the developed countries to stop dam building in developing countries. The recommendations have not originated in the Western world. Rather, many are rooted in experiments and practice in countries such as India.

The following sections will examine two core initiatives: (1)
initiative in the Bargi Dam; and (2) the Task Force Process.

A. INITIATIVES IN BARGI

The Bargi dam is the first of the large dams on the Narmada main stem to be completed. It is located near Jabalpur in M.P. The work on the dam was initiated in the early seventies, and the filling of the dam started in 1987. The huge reservoir of the dam affected 162 villages by submergence. It has an installed capacity of 90 MW and proposed irrigation of 4.37 lakh hectares. The canal network is not even seven percent complete due to severe financial constraints.

There was no rehabilitation policy. Consequently, only those who possessed legal title to land were paid some cash compensation. All others were simply ignored. The cash compensation was too small for the people to purchase alternative lands and there was massive corruption in the distribution of the compensation. Most of the people affected were tribals. Many people just moved up along the slopes of the reservoir and continued to live there, but their livelihoods were destroyed as the agricultural lands were submerged. Many wound up in the slums of Jabalpur as manual laborers, while others were swallowed up by the huge invisible pool of itinerant labor.

In 1990, the affected people came together under the banner of Narmada Bachao Andolan and launched a strong agitation for proper rehabilitation. The struggle reached an intense peak when the people occupied the exposed submergence land and declared that they would not allow the reservoir to be filled. As the waters rose, large numbers of people remained along the submergence land, and large-scale arrests were ordered. At the end of the three-year struggle in 1993, the State Government called a meeting of the affected people and the parties reached an agreement. The Government admitted that the rehabilitation was not done, even though on paper resettlement was complete. It also established a “Rehabilitation Committee”

36. The reservoir level normally decreases as water is released for power generation and is normally at its lowest in the months just prior to the monsoon. The reservoir then fills up as the monsoon rains bring in huge quantities of water.
comprised of representatives of the affected people, NBA activists, and senior government officials. The Committee was to plan the affected people’s rehabilitation on the basis of the available natural resources, land (mainly draw-down land), water, electricity, and forests. A two-tiered Resettlement Committee was also appointed at the State and District levels to operationalize the resettlement. One of the first actions taken was to stop the auction of the rights to reservoir fisheries. These rights were granted to a co-operative of the affected people. The affected people have now been running the reservoir fisheries for the last eight years, which has provided the people some much needed economic relief.

The progress on other fronts, especially efforts to provide land-based economic activity, remains dismal. Those who were affected by the Tawa dam, a project completed over twenty years ago, found encouragement in the struggle of the Bargi people and also launched a struggle for similar rehabilitation. The government in this situation also agreed to grant the reservoir fisheries to the affected people’s organization. However, the progress on other avenues of relief remains dismal.

The significance of this process lies in that it is similar to one of the WCD’s key recommendations, which requires the resolution of outstanding social and environmental issues of existing dams with the affected people’s participation. Note that this took place years before the formation of the WCD. There is a significant difference, however, as the WCD said that “[p]riority must be given to financing a negotiated reparation plan before funding new dam projects in a specific location or river basin in a country.”

37. This author was a Committee member.
38. This essay is not intended to discuss, in depth, the reasons for this, but it should be mentioned that bureaucratic apathy and the casual approach to rehabilitation are largely responsible.
39. The Tawa dam was the first large dam to be completed in the Narmada Valley. It is near the city of Hoshangabad, on the tributary of the Narmada of the same name.
40. The people affected by the Tawa dam had been raising the issue of their proper rehabilitation since their displacement. The Bargi experience gave a fillip to their struggle.
41. See WCD REPORT, supra note 5, at 230 (discussing the financing of
This was not only intended to ensure that the necessary finances would be available to address outstanding issues, but clearly, such an arrangement would place strong pressure on the government to undertake the remedial actions in a timely and purposeful manner. While this has also been the demand of the Narmada Bachao Andolan, it is one that the government has not accepted. As a result, while thousands of people displaced for nearly two decades still anguish, the government moves forward with the building of other dams in the Valley, which further displaces additional people and exacerbates the problem.

B. THE TASK FORCE PROCESS

The Narmada Bachao Andolan, which began its work in the areas affected by the Sardar Sarovar project, has spread to other parts of the Valley, especially after 1995. With the emergence of a valley-wide struggle, the NBA was able to give teeth to its long-standing demand that the planning of development in the valley must be done in a participatory manner with the river basin as a unit. Responding to the pressure of the struggle, in December 1997, the M.P. Government held a unique workshop entitled “Narmada Valley Development--Search for Alternatives.” The participants included the NBA (with people affected by nine major dams in the Valley), energy and water management experts from different parts of the country, senior M.P. government officials, the Chief Minister, and the Deputy Chief Minister (who was also the minister for Narmada Development). After two days of deliberations, the workshop reached the following conclusion:

The projects under the Narmada Valley Development Authority have been prepared under earlier circumstance and an older paradigm of development. There is a need for a review of these under the changed circumstances and paradigm of today... A task force will be constituted to discuss in detail and make recommendations to the Government about the broad framework of alternatives which will include the alternative model of development also.42

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42. Shripad Dharmadhikary, The Quest for Alternatives in the Narmada Valley,
The Task Force, however, formed only after a massive agitation where 4000 people occupied the Maheshwar dam site for twenty days in January 1998. Finally, the Task Force was created by a Government Order dated January 29, 1998. The order stated, "[L]ooking at the size, nature and complexities of the present problems of the Narmada Valley Development a Task Force will be constituted to look into the alternatives to the Narmada Valley Projects."

The Task Force consisted of independent experts, senior government officials, and NBA representatives. NBA put as a precondition that the government make available all information related to the projects, including the general situation of the Valley: topographical, geological, agricultural, demographic aspects, statistics, and maps. The government agreed to this and, for the first time, the people of the Valley gained access to the detailed project reports ("DPRs") and other related studies of the various projects in the Valley. This is significant because most of the projects were finalized in the 1960s, but remained unimplemented even in 1998.

The Task Force meetings would be spread over two periods, three days at a time, and involved the critical analysis of individual projects and detailed discussions of alternatives, as well as other broader issues. The affected people’s participation was vigorous and

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45. This author participated as a member of the Task Force.
in-depth. The Task Force completed its work in approximately ten months.\footnote{46. It may be noted that the Task Force began its discussion before the WCD had come into existence and had submitted its report before the WCD began its work.}

The Task Force considered the issues in two parts. First, the Task Force looked at the entire Narmada Valley Development, including all the proposed and ongoing projects, in a bid to critically analyze the situation and consider alternatives. Second, the M.P. government requested a deliberation and report on the Maheshwar Project on a priority basis. This was in view of the intense agitation that was going on in the Maheshwar-affected area, and the fact that the Maheshwar project was being implemented by a private company on a \textit{BOOT} basis, under a contractual agreement.\footnote{47. \textit{See Task Force to Study Narmada Valley Development Option, Task Force Report on Maheshwar Hydro Electric Project, Narmada Bachao Andolan, at http://www.narmada.org/maheshwar/docs/Book.html#alternatives, at para. 4.0 (Oct. 15, 1998) [hereinafter MAHESHWAR REPORT]; see also supra note 21 for a description of \textit{BOOT} Contracts.}}

The Task Force process can be described as a rudimentary form of the SF-based decision-making process that the WCD has recommended.\footnote{48. \textit{See WCD REPORT, supra note 5, at 211 (recommending "a decision-making process based on the pursuit of negotiated outcomes, conducted in an open and transparent manner and inclusive of all legitimate actors involved in the issue.") available at http://www.damgs.org (last visited June 17, 2001).}} It was also a form of the process recommended by the WCD in its "Special Case: Dams in the Pipeline," where it called for the SF to conduct "an open and participatory review of ongoing and planned projects to ascertain the extent to which project formulation can be adapted to accommodate the principles outlined in this report."\footnote{49. \textit{Id.} at 276.} It is significant that the principles on which the Task Force based its deliberations strongly resembled those accepted by the WCD in forming its basic framework.

The Task Force differs primarily from the WCD SF in its authority. The Task Force was a purely advisory body whose recommendations were not binding and did not have any powers beyond moral authority.
1. Findings and Recommendations of the Task Force

The findings and recommendations of the Task Force provide a reasonably accurate picture of what the WCD Report implementation would look like in the Valley. Below are some of the important findings, observations, and recommendations of the Task Force:

a. Task Force Report on Maheshwar Hydro Electric Project

Conclusions and Recommendations:

The Task Force recommends that the following steps be taken before considering resumption of work of Maheshwar project: Cost-benefit analysis be computed again on the lines suggested above; if the fresh computations also shows greater benefits than cost, a comprehensive plan for rehabilitation programme strictly following the rehabilitation policy as demanded by the Government of M.P. for Sardar Sarovar from the Government of Gujarat be prepared in a participatory manner...; this comprehensive plan should specifically indicate the feasibility of R&R [Resettlement and Rehabilitation]... particularly availability of land for allotment to the oustees and resettlement of the villages as communities; implementation should be initiated if the model R&R plan is found feasible implementation be implemented.50

The Task Force Report enumerates the criticisms of the project (made with extensive documentation and support), particularly the social, environmental, economic, and financial costs. It emphasizes that the cost of power is going to be very high.51 It also lists the various alternatives proposed for the project. It then observes:

50. See MAHESHWAR REPORT, supra note 47, at para 4.0 (emphasis added). The Government's failure to publish the Report of the Task Force exemplifies how the Government developed cold feet on the Task Force process. In the presence of key NBA activists, including this writer, the Task Force Chairperson submitted the Report (labeled a "Brief Report") to the Chief Minister on January 14, 2000. At that time, the Chairperson stated that a "final" Report would be produced with all the Annexures. Yet, it has not materialized. Because the Government has not published the Report of the Task Force, the NBA finally decided to go ahead and publish it. Hence, the report is only available through Narmada Baakao Andolan on its website (www.narmada.org) and not through the Government.

51. See id. at para. 2.1.
We are happy to report that the task force was quite excited about many non-conventional sources of energy that have not been tried in the State in the scale it is feasible. . . . The Task Force is convinced that there is considerable scope in this area, definite that a amount of substantial work can be done in this field given the necessary commitment.

The need to workout afresh the cost-benefit in the framework presented in an earlier chapter is considered desirable and is recommended by the Task Force, as an exercise to be undertaken by the MPEB. . . . We therefore strongly recommend that the Government of M.P. evolve an effective mechanism to monitor and ensure compliance with the conditions of the project, refusing to leave it executing agency to report a formal compliance.53

The Task Force was of the view . . . [Government should] strictly adhere to the same conditions for [rehabilitation of affected people in] Maheshwar and other projects as we demand of Gujarat Government with respect to Sardar Sarovar.

1. Giving land for land . . . ;

2. Settling the village as a community . . . ;

3. [C]omplete rehabilitation plan well in advance of taking up construction . . . ;

4. Satisfactory re-settlement to be complete before December 31, in the year preceding the year of . . . submergence.54

It is clear from the information above that the Task Force’s examination raised serious doubts about the cost and expected benefits of the Maheshwar project, which the State touted as cheap, clean, and indispensable. The Task Force recommended a full re-working revision of the cost-benefit ratio (“C/B”) of the project, giving priority to social and environmental criteria. The Task Force also recommended that the project proceed only if the C/B is positive and the rehabilitation plan is feasible.55 Thus, the process yielded the

52. Id.
53. Id.
54. Id.
55. See MAHESHWAR REPORT, supra note 47, at para. 2.1.
benefit of identifying a potentially unworthwhile project and weeding it out. This process can only have a net positive benefit, even if it results in the cancellation of a dam project.

These recommendations cast serious doubt on the viability and desirability of the project. Midway through the process, the government appeared to develop cold feet on the Task Force. Upon considering the recommendations, the government seemed to lose all motivation to proceed (perhaps because of the influence of vested interests) and it did not accept the recommendations.56

b. Task Force Report on Narmada Valley Projects

The Task Force Report on the Narmada Valley provided more detail and dealt with issues such as the development paradigm, specific alternatives in terms of institutions, technologies, approaches, and social and environmental criteria.57 We summarize below some of the key findings of the Task Force:

The Task Force noted that serious doubts now exist about the efficacy of centralized planning based on the outdated western paradigm of development.58

The purpose [of the Task Force] was to move away from minor specific localized strife to a rational participatory reassessment, generally, of the basic issues in planning and development and more specifically in the area of water resources management and to evolve a new vision - an alternative paradigm of development and a fresh approach to the planning process59... A close examination, today, of the existing master plan for the development of the Narmada Valley highlights the radical change that has occurred in the approach to the water resources development in the past three decades.60

The Task Force concluded that the largely financial and economic cost-benefit analysis formed the main criteria for project selection in

56. See supra text accompanying note 23.
57. See Report on Narmada Valley Projects, supra note 43.
58. See id. at para. 5.
59. Id. at para. 2
60. Id. at para. 7.
the earlier approach, while social and environmental considerations, social displacement, psychological trauma, equity, and sustainable use of natural resources were not major considerations.61

The Task Force not only concluded that these considerations must now play a decisive role, but also said that the limitations imposed by "societal and administrative capacity," especially with regard to resettlement of displaced people, must determine the scales and locations of projects, along with other parameters.62

The Task Force recommended that the water utilization begin at the uppermost points of the catchments with decentralized small schemes and watershed development.63 Medium and large dams, if required for the storage of "residual surpluses," would be used "albeit with relatively smaller storage capacities" and smaller submergence.64 Only those projects that are capable of fully complying with resettlement and environmental norms should be initiated. Clearly, this raises serious doubts about the implementation of many of the ongoing or planned projects in the Narmada Valley. The Task Force recommended a re-examination of many of these projects. It stated, in part, that "the Task Force emphasizes that due to the problems of human displacement, the trauma of social dislocation and psychological stress, the realistic limitations in finding adequate land for rehabilitation . . . it is becoming exceedingly difficult to establish the economic feasibility or social justifiability of the large and medium projects."65

The Task Force discussed issues such as decentralized planning and watershed development, noting that current efforts were "ad hoc, sporadic, and unscientific."66 It made several recommendations for making efforts more effective and holistic.67

The Task Force recommended that the Goi River sub-basin, a

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61. See id. at para. 8(iv).
62. Id. at para. 11(i).
64. Id. at para. 14.
65. Id. at para. 15
66. Id. at para. 22 (emphasis added).
67. See id. at para. 35 19-24.
tributary of Narmada that has a total area of 215 000 hectares, be used to test the new paradigm.  

2. Indira Sarovar (Narmada Sagar Project)"

A complete review of the economic viability of the ISP should be undertaken, and fresh benefit-cost ratio derived after quantifying all the realistic human, social and environmental costs.  

It is necessary to analyze and ascertain the extent to which human trauma can be reduced at different heights (FRL) of the dams, retaining its present nature of a multipurpose project. Similarly, it is necessary to find out the maximum required height of ISP, if it is envisaged only as a power project.  

C. ENERGY AND POWER

The Task Force stressed the need to evaluate and carefully distinguish between basic survival needs and lesser priorities, prioritize the demands, and address the issue of demand justification. The Task Force also noted that improvement in the efficiency of existing capacity can meet a portion of the supply-demand gap. The Task Force called for an integrated resource plan for the energy and power sectors, including supply-side measures, demand-side measures, and the harnessing of non-conventional and renewable resources. It listed a number of technologies which could be used to meet energy demands and emphasized the need to use

68. Report on Narmada Valley Projects, supra note 43, at para. 25 (agreeing that the proposed Lower Goi and Upper Veda projects (two out of the thirty large dams in the Valley) would be suspended and the alternative approach would be implemented in these areas). As with other recommendations of the Task Force, this too lies unimplemented. See id.

69. The Narmada Sagar project is gigantic and the biggest in the Valley. If it is completed, it will have the largest man-made reservoir in the country.


71. Id.

72. See id. at para. 39.

73. See id. at para. 40.
these alternatives as options.\textsuperscript{74}

Some of the options recommended by the Task Force include “options for restructuring the existing or planned projects to get more out of them such as installing 180 MW additional capacity at Bargi dam- where the social and environmental costs have already been paid.”\textsuperscript{75}

The Task Force also stated that even after all these considerations, if there is still a need for a large conventional hydro project,

\begin{quote}
The planning, selection, choice, location, and execution of such projects should be based on a fresh cost-benefit analysis with the new parameters suggested by the task force and only if they are found to be viable and acceptable from all these angles, they should be implemented avoiding, to the maximum extent possible, displacement and trauma.\textsuperscript{76}
\end{quote}

The Task Force recommended a people-oriented, transparent, public commission to oversee implementation of all this.\textsuperscript{77} The Task Force finally concluded that “[p]hasing out the finite and expensive resources of energy which carry a high socio-environmental cost burden, should be the accepted policy.”\textsuperscript{78}

\section*{V. LESSONS FROM TASK FORCE REPORT AND CRITICISM OF THE WCD REPORT}

It is clear that the process of participatory review of existing dams has revealed an outdated basis of planning and a need to critically evaluate the social and environmental costs and review the cost-benefit ratio of these projects. The process has shown that most of the major ongoing and planned projects are unlikely to meet the social and environmental criteria, and a number of alternatives are available that would better implement the Task Force’s recommendations. Indeed, while the Task Force found that there \textit{may}

\begin{footnotesize}
\begin{enumerate}
\item[74.] See \textit{id.} at para. 43.
\item[75.] \textit{Id.} at para. 47.
\item[76.] \textit{Report on Narmada Valley Projects}, \textit{supra} note 43, at para. 51.
\item[77.] See \textit{id.} at para. 53.
\item[78.] \textit{Id.} at para. 54.
\end{enumerate}
\end{footnotesize}
be a need for undertaking large dams projects in the Valley, this need must be established first; even after this, these projects can go ahead only if the social and environmental aspects can be addressed, and even then “albeit with relatively smaller storage capacities for impounding residual surpluses.”

The Task Force findings are dramatic, and strongly reinforce the later WCD recommendations. We now examine the criticisms of the WCD Report in light of the above scenario. The Task Force process certainly shows that if the WCD recommendations are implemented, they will indeed lead to radical restructuring of current plans and could even lead to many large dam projects being dropped. This is not as bad as the Indian dam establishment purports it to be. After all, what the Task Force process shows is that dam projects would need to be reexamined where the C/B ratio is in doubt, leading to a net benefit, as dams with adverse C/B ratios are dropped. It also shows that dams with adverse social and environmental impacts would have to be abandoned, especially if the avoidance or mitigation of such adverse consequences is not possible. This is by no means an undesirable result. Lastly, and most importantly, this process has shown that there are a large number of alternatives available and a re-examination along the lines suggested by the WCD will open up space for these alternatives to be implemented."

The Bargi experience demonstrates that it is imperative to address outstanding social and environmental issues on a priority basis. The construction of new projects must be conditional on this. Dam proponents will argue that this will open up a Pandora’s box and constrain new development due to a huge backlog of outstanding issues. Practically every dam in India would have a legacy of people displaced without resettlement. This argument, however, is not tenable for the simple reason that addressing outstanding social issues, especially resettlement of people displaced decades ago, is a matter of justice. It is a matter of restoring to people their fundamental rights. If this necessitates a slowdown of new dam construction, then a slowdown must be accepted. In fact, the dam-

79. Id. at para. 14.

80. See WCD REPORT, supra note 5, at 221-24 (establishing guidelines for undertaking a “Comprehensive Options Assessment”).
building establishment has proven that it responds only to this type of pressure.  

In short, if the WCD recommendations are followed, the net result would be the implementation of better alternatives and better dams. It would result in delivering justice to those who have been suffering for decades. Further, it would protect the environment and the livelihoods of the lakhs who depend on the environment.

More importantly, the implementation of the WCD recommendations will result in a decisive shift in the balance of power. People who, for centuries, have had little say in what happens in their lives, will be able to meaningfully participate in decisions affecting their lives. Technocrats, bureaucrats, and politicians who have long enjoyed absolute power will find their powers diminished. This is the real reason for the vehement reaction to the WCD report among the dam establishment. It is not the fear that development of water and energy resources will come to a standstill because, as the Task Force report has shown, that will not happen. It is also not a concern that many beneficial projects will be abandoned, because that will not occur. In fact, it is only substandard projects that will be abandoned, resulting in a net benefit to India. It is the dam-building establishment’s fear of losing power and control over vast resources that is their real concern. The WCD has recognized this very clearly when its chair stated in the Preface that, “Our genesis, work process and implications of this Final Report are by nature quite political. Our mandate involves the most precious element on earth, and that, of course, involves power: who wields it, how to share it, which ways the state may better balance it.”  

This statement reflects the reasons why the government that initiated the Task Force Process developed cold feet and lost all political will when the Task Force reached its logical conclusions. The government refused to even publish the report, let alone implement it. In the case of the Maheshwar Project, where a private

81. See supra text accompanying note 43.
83. See supra text accompanying note 50.
company is building the dam, the government unleashed inhumane repression on the affected people who have continued to protest, demanding the implementation of the Report.  

As the WCD says: "Similarly the political economy of power, vested interests and access to resources that characterize each society have a large influence on its commitment to equitable and sustainable development."  

Let us take a look at two strong points of attack on the WCD recommendations, criticisms which seem to state reasonable concerns but are actually specious arguments. The first is that the WCD recommendations are cumbersome and time-consuming, and implementation of these recommendations will immeasurably delay projects, causing financial agencies and the private sector to lose interest. To quote from the Government of India's Ministry of Water Resources ("MOWR") Detailed Response to the WCD:  

Developing Nations such as India will certainly be concerned that such a cumbersome negotiation process, with mediation steps, review by expert panels, and requiring all detailed information about the potential impact on the ecosystem and the population, will, in fact, stall any new development projects. The cumbersome nature of the process is further complicated by the WCD recommendation to revisit the operational parameters of a constructed dam with all stakeholder participation at the end of each five-year period. This will add additional risk to project  

84. In April 1999, the people of the Narmada Valley launched an intense agitation in Bhopal, the capital of M.P. About 500 people affected by the various large dams in the Valley sat for a month-long sit-in in Bhopal, demanding the implementation of the Task Force Report. Seven of these also undertook an indefinite fast that lasted twenty-two days. Finally, the Government agreed to implement some of the recommendations and issued a Government Notification for the same. In this notification too, the recommendations related to the Maheshwar project were not accepted. The Government Notification and the promises made by the Government, of course, remain unimplemented to date.  

85. WCD REPORT, supra note 5, at 203.  

86. Letter from Mr. A. Sekhar, Comm'r, Ministry of Water Resources, Government of India, to Mr. Achim Steiner, Secretary-General, WCD (Feb. 2, 2001), available at http://genepi.louis-jean.com/cigb/Inde.htm. The detailed response of the Government of India is placed on the ICOLD's website. This is in the form of a note by the MOWR. The author is not aware of any other place where the response has been published. The CD brought out by the WCD and the WCD's web site itself carry only the brief response of the Government of India.
development by developing Nations such as India. This document will make it difficult for the financial institutions to support the new programmes of developing countries; the result will be creating enormous delays and increased costs of Projects for developing Nations who may have to find their own funding methodologies.\footnote{87}

The WCD offers one answer to this. It notes that the implementation of the recommendations may have some up-front costs, both financial and in time, but ultimately the recommendations will result in projects that are fundamentally sound, economically viable, and more widely accepted by the public. Far less time, money, and energy is likely to be lost in subsequent conflicts. The result will be better projects involving less time and expense.

The Task Force process demonstrates that the process of participatory, SF-based decision-making is more likely to involve fewer conflicts and take less time than apprehended. The Task Force completed its deliberations in ten months. The whole process proved extremely cordial and without incident—a miracle considering that the negotiating parties intensely conflicted outside the room.\footnote{88} This illustrates the obvious interest that all the parties had in conducting the discussions. The Task Force also reached many unanimous conclusions, a possibility that seemed very unlikely.

It is equally important to note that this time period is miniscule compared to the gestation periods of large dam projects. In the case of the Narmada Valley projects, the first surveys were initiated in 1946, nearly fifty-five years ago. The first Detailed Project Reports for the major schemes were prepared in 1959-1965, over thirty-five

\footnote{87. See id.}

\footnote{88. Even as the Task Force sat and discussed, the people affected by the Maheshwar project protested and the Government unleashed terrible repression - violent police beating of women, unlawful arrests, intimidation – to the extent that India’s National Commission on Women intervened to condemn the same. The reason for the protest was simple – when the Task Force was constituted, the Government issued a notification dated January 30, 1998 staying all work on the Maheshwar project until all parties had a chance to study the report submitted by the Task Force. Suddenly, in the middle of the process, when barely a couple of months had passed, the Government issued unilateral orders allowing the company to re-start construction. Despite this development, the Task Force deliberations continued.}
years ago. During the intervening fifty-five years from the first surveys to today, the large dam projects in Narmada Valley have resulted in the installation of ninety megawatt generating capacity, and completion, or partial completion, of projects with planned annual irrigation capacities of 706,216 hectares and an actual irrigation of only thirty-five percent of this, some 245,939 hectares. This is the benefit after fifty-five years of planning: only ninety megawatts and 245,939 hectares of irrigation!

Vast resources were spent in the process, thousands of hectares of forests destroyed, and many people displaced. It should be noted that such long gestation periods are not atypical of large dam projects. Thus, it makes no difference that the WCD recommended SF takes even two years to reach a decision. In fact, the Task Force report showed that many of the alternatives could start delivering benefits within a couple of years.

The second criticism is that the WCD recommendations are a product of the “developed” countries, with standards inapplicable to “developing countries” and to India in particular. The response of the ICOLD to the WCD Report stated, “Based upon our world-wide experience, we consider that the WCD detailed recommendations are mostly designed for and based on the experience of developed countries, which have the time and money to explore all possible alternatives to dams and can afford, if they wish.”

The Task Force process, as well as the Bargi experience, demonstrates that many of the important recommendations of the WCD were already put in practice in India, albeit in a somewhat

89. Narmada Control Authority, Annual Water of Narmada Basin Up to Sardar Sarovar Dam Site for Years 1991-92, 1992-93, 1995-96. The Narmada Control Authority is a body consisting of representatives of the four state Governments and the Central Government; this is the body that is charged with implementation of the Award of the Narmada Tribunal.

90. Letter from Shri C.V.J. Verma, President, Int’l Comm’n on Large Dams, to Kader Asmal, Chairman, World Comm’n on Dams, (Nov. 30, 2000), available at http://www.dams.org/report/reaction_icold2.htm (last visited June 17, 2001). The current President of the International Commission on Large Dams (“ICOLD”), Shri C.V.J. Verma, is from India and one can safely presume that the Indian dam-building establishment's views must have had significant influence on the ICOLD position. Due to the similarity in the responses of ICOLD and the Government of India, MOWR also points to this “shared response.”
differently. This implementation occurred even before the formation of the WCD. The WCD recommendations have resulted directly from its review of the global experience and the internationally accepted norms of human rights. Since these are common all over the world, it is to be expected that wherever a genuine attempt is made to address the issues raised by large dams based on an independent and open-minded assessment of past experience, the conclusions for the future would be similar.

There are many areas in which the Indian institutions have put forth recommendations similar to those of the WCD. The example of the Task Force process is already given above. Another example, the Narmada Water Disputes Tribunal Award, set forth conditions for resettlement similar to the WCD norms.91

In 1993, the Government of India established a five-member group to review the SSP. Among other things, this group recommended that the definition of the “Project Affected People” should be expanded to include not only the submergence-affected people, but also people affected adversely in any manner whatsoever by the project, with development of category-specific resettlement packages.92 This is similar to one of the WCD’s key recommendations.

The value-addition by the WCD is that it has taken hundreds of such initiatives from all over the world, not only from developed countries, and put them together in a coherent and systematic manner, to give a holistic framework instead of a piecemeal approach. Indeed, the WCD is firmly rooted and based on sound global experiences.

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91. Compare Directors Regarding Submergence Land Acquisitions and Rehabilitation of Displaced Persons, Final Order and Decision of the Narmada Water Disputes Tribunal Award, at cl. XI (Dec. 12, 1979) (providing for land compensation, non-land compensation, and civic amenities), available at http://nca.nic.in/nwdt_final_order_deci.htm (last visited June 17, 2001), with WCD REPORT, supra note 48, at 109 (requiring several conditions such as “low level of displacement, resettlement as development policy with supporting legislation, a combination of land and non-land based sustainable livelihood provisions, strong community participation and accountability and commitment from government and project developers.”).

92. It is another matter that the Project has not accepted this recommendation.
VI. WCD FRAMEWORK, RECOMMENDATIONS, AND LEGAL REGIME IN INDIA

A very significant aspects of the WCD Report is that its risks-and-rights framework, core values, and seven strategic priorities (and policy principles which elaborate these) are developed from internationally-accepted frameworks of human rights and environmental practices, namely United Nations resolutions and the Rio Declaration.\(^93\)

In India, it is a settled principle of law that international treaties and covenants to which India is a signatory, as well as established principles of international law, are to be read into the legal regime and Fundamental Rights of citizens of India. As a part of the legal submissions to the Supreme Court during the hearings of a case filed by the Narmada Bachao Andolan,\(^4\) Senior Counsel for the NBA and former Law Minister of India, Shanti Bhushan, made the following submission:\(^95\)

The Supreme Court has held in a large number of cases that international treaties and covenants can be read into the domestic law of the country and can be used by the courts to elucidate the interpretation of fundamental rights guaranteed by the Constitution. In *Gramaphone Co. of India Ltd. vs. B.B. Pandey* this Court has held that:

There can be no question that nations must march with the international community and the municipal law must respect rules of international law even as nations respect international opinion. The comity of nations requires that rules of international law may be accommodated in the

93. See U.N. Conference on Env’t & Dev., Rio Declaration on Env’t & Dev., U.N.Doc.A/Conf.151/5/Rev.1, at princ. 10 (1992) (“At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.”) reprinted in 31 I.L.M. 874, 878 (1992).


municipal law even without express legislative sanction provided they do
not run into conflict with acts of Parliament... The doctrine of
incorporation also recognises the position that the rules of international
law are incorporated into national law and considered to be part of the
national law, unless they are in conflict with an Act of Parliament... But
the courts are under an obligation within legitimate limits, to so interpret
the municipal statute as to avoid confrontation with the comity of nations
or the well established principles of international law.\(^96\)

Further, in PUCL vs. Union of India,\(^97\) this Court while dealing with the
applicability of the International Covenants on Civil and Political Rights
1966 held that “for the present it would suffice to state that the provisions
of the covenant, which elucidate and go to effectuate the fundamental
rights guaranteed by our Constitution, can certainly be relied upon by
Courts, as facets of those fundamental rights and hence enforceable as
such.”\(^98\)

In CERC vs. Union of India,\(^99\) this Court directed that the rules framed by
the International Labour Organisation for Safety for the use of asbestos
shall be binding on the Government and all industries in the country. This
was also on the principle that international conventions can be read into
domestic law.\(^100\)

While the Final Judgement and Order of the Court (Majority
Judgement) in this case dismissed the plea of the Petitioners for a
review of the Sardar Sarovar and ruled for a conditional continuation
of the project, it also observed that:

\begin{quote}
While accepting the legal proposition that International Treaties and
Covenants can be read into the domestic laws of the country the submission of the respondents was that Article 12 of the ILO Convention
No. 107 stipulates that “[p]opulations concerned shall not be removed
without their free consent from their habitual territories except in
accordance with national laws and regulations relating to national
security, or in the interest of national economic development or of the
\end{quote}

\(^{96}\) 1984 2 SCC, 534, para 5,
\(^{97}\) 1997 3 SCC, 433, para 13.
\(^{98}\) Id.
\(^{100}\) Id.
A reading of Chapter 7 of the WCD Report demonstrates that its entire framework is drawn from internationally accepted declarations or charters from the international framework on human rights. Chapter 7 states that:

The UN Declaration of Human Rights, the Right to Development and the Rio Principles together make up an internationally accepted framework of norms empowering a concept of development that is economically viable, socially equitable, and environmentally sustainable. It is a powerful framework with a central bearing on the dams debate. Figure 7.1 of the Report illustrates how the Commission draws on these internationally accepted norms in the remainder of this report to develop a new policy framework and corresponding guidance for water and energy resources development.\footnote{102}

True, these are not the same as covenants or treaties that countries ratify, which are binding. Rather, these declarations and charters are in the nature of declared intentions or internationally endorsed statements of principles. These clearly form "well established principles of international law."\footnote{103} The WCD also relies upon international conventions such as ILO 107 and ILO 169, the former of which has been ratified and is binding on India.\footnote{104} Clearly, on the basis of settled principles, these international declarations, treaties, and charters can and would guide the elucidation of the domestic law in the country, in particular the fundamental rights.\footnote{105} Certainly, the argument can be made that the specific guidelines, criteria and policy


\footnote{102. See WCD REPORT, supra note 5, at 202.}

\footnote{103. Id.}


\footnote{105. The author is not a lawyer. However, the above legal argument is being made on the basis of discussions with lawyers and familiarity with legal principles and interpretation resulting from involvement in the NBA Supreme Court case for five years and significant experience with human rights work.}
principles formulated by the WCD are one possible interpretation of the international resolutions and covenants. Even if these were to be read into Indian domestic law, it is not necessary that the WCD interpretation be accepted. However, one needs to take into consideration the nature of the WCD. The WCD is arguably the optimal body to interpret the international declarations, covenants, and treaties in terms of their application to dams. The WCD consisted of extremely qualified members and represented all sides of the dams debate. These members, after two years of intense study and consultations, formulated unanimous recommendations. One cannot find a better agency to accomplish what they did, and certainly not one that carries more legitimacy in the eyes of all sections and stakeholders.

Thus, the argument that the WCD recommendations originate from somewhere in the Western world is without merit. The WCD recommendations arguably represent the fundamental rights of the Indian citizens guaranteed by the Constitution, with the incorporation of the principles of international treaties, resolutions, and covenants interpreted in the context of dams by a competent technical body. 106

In many cases, Indian domestic law is also moving in the directions indicated by the WCD, though independently of the WCD. For example, the provisions of the Panchayat Extension to the Scheduled Areas Act, 1996 indicate that Parliamentary policy is moving towards an “informed consent” policy for the scheduled, or tribal, areas. 107 Section 4, Clause (I) of the Act states:

Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features namely . . .

106. The word “technical” is not used here in the narrow sense of engineering, but in the sense of an expert body pertaining to the “technique” of dams, including the social, environmental, and financial aspects.

(i) The Gram Sabha\textsuperscript{108} or the Panchayats\textsuperscript{109} at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level.\textsuperscript{110}

International and Indian experience with environmental law, human rights legislation, and developmental law all show that the actual codification of experience and good practice into laws is probably ten to fifteen years behind ground experience. The WCD Report offers a chance to shorten this time, by drawing upon global experiences of water and energy resource development planning in a systematic and holistic manner. In fact, the principles enunciated in the WCD Report go beyond dams and are relevant for other areas of development planning as well.

CONCLUSIONS

The initiatives in the Narmada Valley, including the Task Force process and the Bargi process, in many ways parallel the recommendations of the WCD. Therefore, these initiatives allow the opportunity to see how the implementation of the WCD recommendations would be executed. The experience of these initiatives reveals that proper implementation of the WCD recommendations would have an immensely positive impact on water and energy development. Implementation of the WCD recommendations would eliminate inferior projects and improve beneficial projects by making them more just, equitable, and sustainable. In the long run, WCD recommendations would make projects less expensive and more acceptable, creating space to implement alternatives to large dams. The initiatives in the Narmada Valley also belie the argument that the WCD recommendations emerge from the Western or “developed” countries and are not suitable for “developing” countries. In fact, the WCD

\begin{itemize}
  \item \textsuperscript{108} The Gram Sabha consists of the total adult population of the village.
  \item \textsuperscript{109} Panchayat is the elected governing body at the village level.
  \item \textsuperscript{110} Panchayats Act, \textit{supra} note 107, at sec. 4.
\end{itemize}
recommendations can be construed as enlarging and elaborating the scope and range of the fundamental rights of the citizens in India. The argument that the WCD recommended SF-based decision-making process would lead to endless delays and render (due to the delay) many projects impossible to build is totally unfounded. The time period required by this process is likely to be a small fraction of the total gestation period presently typical of large dams. In fact, the net impact of this type of process would be to shorten the time for implementation. Even in cases where the dams have been in the planning stages for many years, it would be worthwhile to conduct a review as recommended by the WCD.

In the end, the implementation of the WCD recommendations is likely to result in justice for the affected people and the balance of power shifting towards those who, to date, have been powerless and voiceless. As a corollary, power would also shift away from the dam-building establishment, technocrats, bureaucrats, and politicians. This is at the root of the vehement and shrill opposition to the WCD Report from some sections of the dam-building establishments.