

“Our lands, our fields, our very lives are here”

COMMUNITIES OF HOLI VILLAGE ASSERT THEIR RIGHT TO DECIDE



All Women Fact-Finding Team Report

**HIMDHARA & WOMEN AGAINST SEXUAL VIOLENCE AND STATE
REPRESSION (WSS)**

June 2014

I. BACKGROUND

The fact-finding team (FFT) first saw them scrambling down a hillside in the distance, like a scurrying line of ants who have been disturbed by an unknown intruder. Except that this was a colourful line of women, all moving out from a tiny tent-like structure, hurrying down the slope towards the group waiting below. They surrounded the team with stories of what was happening, a jumble of words: *“Pahad ke daayein taraf aur baayein taraf ... JCB le aaye ... Hum datkar baithhe rahe ... Humey giraftaar kiya ... 24 ghante hum yahin par baithi rehti hain...”*

On March 25, 2014, 31 women from a nondescript remote village in Chamba, Himachal Pradesh were arrested for protesting against the starting of the work of the 180MW Bajoli Holi Power Project. The opposition to the GMR project is almost 2 years old, but in recent past the situation in the area has become sensitive as Police-on-demand have been stationed to assist the company in carrying out their construction activities by addressing any ‘law and order’ situation. While the women were released on bail the next day, a series of cases were filed against them including promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, doing acts prejudicial to maintenance of harmony, voluntarily causing hurt to deter a public servant from his duty, rioting, unlawful assembly, wrongful restraint, intentional insult with intent to provoke breach of peace, criminal intimidation and using criminal force to commit theft. Despite this, the women continued their 24 hour agitation at the project site. Since then, several incidents of threat and intimidation have occurred, with the local contractors, politicians as well as the District Administration exercising pressure for the women to call off their protest.

In this situation, in April 2014, as groups concerned for the issues being raised by the women and in support of their democratic rights, an independent all women’s fact finding team visited the area and interacted with the local women and men. This document attempts to trace the history and background of the agitation and examine the demands being raised by the communities living in the affected villages. The fact-finding team also shares its observations of the situation on the ground.

We urge the state authorities and the Central government to take cognizance of the seriousness and urgency of the situation and respond with sensitivity and concern for the environment and the people of Holi.

II. THE AREA

The Holi sub-tehsil is a part of the Bharmour Tehsil of the Chamba district, which lies to the north of the Kangra District and is sandwiched between the Dhauladhar and Pir Panjal mountain ranges of the Himalayas. Rugged mountainous terrain, fast flowing rivers, beautiful vistas, dense coniferous and oak forests, expansive pastures, hardy people and their traditional dwellings made of mud, wood, stones and slate characterise the landscape of the area. This land is also known as Gaderna, the land of the Gaddis. The Gaddis are traditionally sheep and goat herders who traverse across different valleys of the state during their annual journeys in search of grass with their herds. The people of Holi area, located in the upper stretches of the Ravi River basin, cultivate a diversity of agricultural crops like wheat, barley, rajmah and millets. In the past few decades, apple cultivation has emerged as a major source of cash income for the farmers of the area as orchards slowly take over the available agricultural land.



The women protestors have been maintaining a day and night vigil under this makeshift tarpaulin shelter for almost two months now.

On April 16, 2014 the fact finding team went to a place about 3km from Holi village in the Chamba district of Himachal Pradesh. It is a valley, with a tiny stream flowing through it, flanked by a small hydroelectric project powerhouse (5 MW Himachal Hydro Project) on the one side and the Dhauladhar range of the Himalayas on the other. A tent (little more than 4-5 sticks covered with a yellow tarpaulin as roof) was the *dharna sthal* of a gutsy group of about 90 women of Holi village belonging to the Gaddi Scheduled Tribe. When the team reached the spot, the women had already been sitting there for fifteen days, peacefully protesting the arbitrary changes made in the design of the tunnel and the power house of the 180 MW GMR Bajoli-Holi hydropower project.

The design change would move the original plans of tunneling through the right bank of the river (barren and rugged) to the left bank (lush green and heavily populated). The community feels that if constructed as per the current design, the project would destroy their houses, dry up natural water springs and force them to become overnight refugees, as has happened in the case of some other hydroelectricity projects in the state.

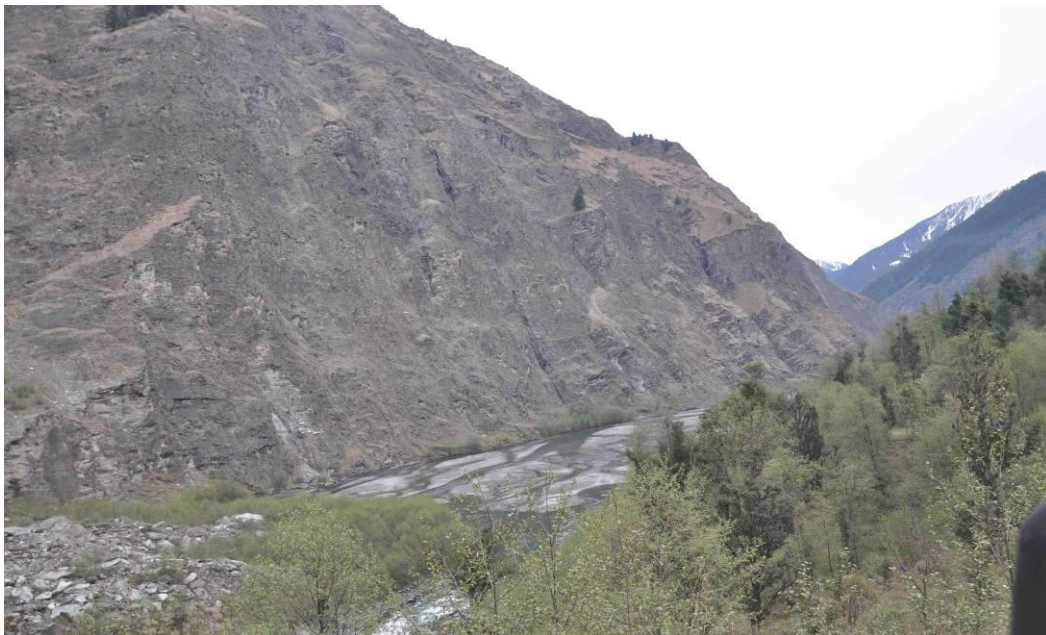
The villagers of Holi allege that this change was made to save time and money, keeping in view the easy access provided by the road that exists only on the left bank. They have been registering their protest with government officials and the project administration on this issue ever since. **It is important to point out that the communities are not against the hydropower project *per se*; their only demand is that it be constructed according to the original design on the right bank and not on the left bank.**

III. ABOUT THE BAJOLI-HOLI HYDRO POWER PROJECT

The Bajoli-Holi Hydro Power Project is a 180MW (3x60MW), run-of-the-river project situated on the river Ravi, village Bajoli, district Chamba, Himachal Pradesh. As per the Environmental Clearance granted to the project, the total land requirement for the project is 85.70 hectares. Out of this, 75.23 hectares is forest land, 0.90 hectares of horticultural land, and 9.57 hectares of private land.

In 2004, the Central Electricity Authority (CEA), Ministry of Power, Government of India, prepared the pre-feasibility report of the project, which was based on right-hand bank design. This report was prepared as part of the 50,000 MW hydro-power initiative vetted by CEA. In 2007, the Himachal Pradesh State Electricity Board Ltd (HPSEBL), which had prepared the CEA pre-feasibility report, also prepared a detailed project report in 2007, which was based upon the right bank design with scientific inputs from the Geological Survey of India. Both these reports were based upon construction of the project tunnel and power house on the right bank of river Ravi and found that the project was viable geologically, economically and financially.

In July 2007, GMR Energy Limited (later GMR Bajoli Holi Hydropower Ltd.) was awarded the project on 'Build-Own-Operate-Transfer' (BOOT) basis for a period of forty years from the commencement of commercial operations. It obtained the Terms of Reference for conducting environmental impact assessment (EIA) studies from the MoEF in February 2008. **This again was based on the right-bank design and was under the declaration that no forestland or habitation was to be affected.**



View of the right bank (far side) and left bank- as evident, the left bank is made up of dense forests, agricultural fields and habitations, whereas the right bank is barren and rugged.

In December 2008, GMR, the project proponent, shifted the location of the 15 Km long, 5m wide tunnel and the power house for the project from the barren and uninhabited right bank to the left bank of the river, purportedly on the basis of it “being more suitable”. The locals allege that the reason for the change of alignment of the project was to save costs, as there is already an existing road and other infrastructure on the left bank which would have to be developed from scratch on the right bank. Subsequently, the company got all its clearances – including the environment, forest and techno-economic clearances for constructing the project on the left bank.

IV. THE PROTEST

Up until the survey of the project was on, the common understanding in the local area was that the project tunnel is coming up on the right side. A series of developments since 2010 need to be considered:

- The first Environment Clearance Public Hearing for the project, held on April 19, 2010, witnessed a huge uproar with all the people present protesting against the proposed plan to construct the tunnel and the power house on the left bank of the river. The Deputy Commissioner, Chamba, was forced to tell the project proponents to obtain no objection certificates (NOCs) from each of the five affected Gram Sabhas before he would recommend to the Government to conduct another public hearing. The project proponents then went all out to ensure that the politically strong people within each Panchayat spoke in their favour. Consequently, there was little opposition in most of the Gram Sabhas while the issue of granting NOCs for the project was being discussed. The Holi Gram Sabha was an exception to this decision as it had, on April 4, 2010, annulled its NOC to the project dated July 19, 2009, on account of insufficient quorum on that date. However, the next Public Hearing for the project was ordered for October 30, 2010, wherein there was little resistance to the project proponent's proposal, with most of the politically strong people favouring the construction.
- Though there were some minor protests against the company after the people of the area witnessed the bursting of the tunnel of Chamera III Hydroelectricity Project downstream, the next big protest happened on January 3, 2013, when the project proponent started felling trees for constructing on the project, having obtained Forest Clearance without the mandatory consent of the Gram Sabhas under Forest Rights Act. That day, as per the official version, a crowd of about 800-900 people gathered outside the office of the Naib Tehsildar and forced him to order the project proponent to stop construction. This decision was later overruled by the higher authorities, saying it was beyond the powers of the Nab Tehsildar.
- The opposition in Panchayats other than Holi petered out as the local political elements coerced and intimidated opponents of the project, especially after the power shift at Shimla from BJP to the Congress. Holi became the hub of protest as the women's struggles against the project gained momentum in early 2013. The key demand was a shift in the tunnel of the project back to the right hand side as originally planned.
- Among all this, some local petitioners initiated legal action in the High Court. They raised three main issues:
 - The non-appraisal of the impact of the shift of the project components on the forests and livelihood;
 - The legality of the Forest Clearance for the project in violation of Forest Rights Act;

- The non-conduct of cumulative impact assessment of hydroelectricity projects in the Ravi river basin.

Two matters, *Mangni Ram vs. Union of India* and *Vinod Kumar vs. Union of India* were heard at the High Court between February, 2012 and May, 2013. The High Court dismissed the two petitions with a cost of Rs. 25,000 on each of the five petitioners. On November 13, 2013, the Court also dismissed a review petition filed by the petitioners. A Special Leave Petition was filed at the Supreme Court in February 2014 and is listed to be heard in the month of July.

- March 25, 2014: The arrest of 31 tribal women from protest site at Holi. Prior to the arrest, the women were being pressured to allow the start of the work at the power house site of the project at Kee Nala.
- April 2, 2014: Women of the “Holi Ghati Sangharsh Samiti” begin peaceful and non-violent 24 hour vigil at the construction site.



The fact finding team too witnessed the illegal felling of trees by project contractors near the proposed power site of 180 MW Holi-Bajoli project on April 16, 2014.

V. SOME QUESTIONS ABOUT THE PROJECT

A. *What was the legality of changing the Terms of Reference?*

Issuing the Terms of Reference for EIA studies (henceforth 'ToR') is one of the very first steps in considering the environmental clearance of any project. The EIA Notification of 2006 lays down a clear procedure for submission and approval of ToR¹. They are arrived upon by the Environment Appraisal Committee (henceforth 'EAC')² after detailed deliberations and discussions based on the information furnished by the project proponents. The ToR for the Holi-Bajoli Hydro Project was issued by the MoEF on 11.02.2008, where it clearly states that that **"No forest or habitation will be submerged"**.

On 02.12.2008, Dr. S. Bhowmick, Additional Director, MOEF issued a letter bearing J-12011/86/07-I.A.I to the head of Hydro Projects, GMR Energy. Referring to a letter dated 01.12.2008.

“...It has been noted that your consultant during investigation and survey has found locating Power Intake, Head Race Tunnel, Power House and Tail Race on the left bank of the river is advantageous instead of the right bank which was proposed at the time of obtaining the ToR.

2. This has been reviewed in the Ministry and the undersigned is directed to inform that this Ministry has no objection for locating the project components as stated on left bank of river Ravi instead of right bank. The TOR approved vide abovementioned letter will remain unchanged.”

This letter by the MoEF dated 02.12.2008 makes no reference to the matter having been placed before the EAC. In fact, the Expert Appraisal Committee for River Valley and Hydroelectric Projects had met only once in the month of December 2008 (on 15th and 16th of December 2008) where no aspect of the Bajoli-Holi project was placed before it for consideration.

- *When and under what authority did the MOEF review the proposal by GMR and issue a no-objection to shifting the project from the right bank instead of the right bank, that too the very next day of the application? It is only the EAC that is empowered to issue and revise TORs.*

¹ The EIA Notification, 2006 lays down as follows: “Scoping”: refers to the process by which the Expert Appraisal Committee ... determine detailed and comprehensive Terms Of Reference (TOR) addressing all relevant environmental concerns for the preparation of an Environment Impact Assessment (EIA) Report in respect of the project or activity for which prior environmental clearance is sought. The Expert Appraisal Committee or State level Expert Appraisal Committee concerned shall determine the Terms of Reference on the basis of the information furnished in the prescribed application...

² As per the EIA Notification, 2006, the whole process of grant or denial of environmental clearance, including the issuance of TOR, consideration of the EIA report, etc., are actually undertaken the EAC. It is only based on the recommendation of the EAC that the MOEF can issue TOR or the final environmental clearance.

Clearly, the MoEF did not follow the due process before granting the so-called “No objection” to the company the very next day after receiving the request.

- *Further, how could the original ToR, which was based on the information that “No forest or habitation will be submerged”, have remained the same when the location to which the project was to be shifted to was heavily inhabited and had rich horticulture and forest resources?*
- *Lastly, why was the letter about the environmental clearances only sent to the company and not to other departments, as is usually the case? The usual practice of the MoEF while issuing/revising ToR, issuing the environmental clearance, etc., is to copy the letter to other Central and state departments. This was done in case of the original ToR and EC of the Bajoli-Holi Project as well, but not for the letter dated 02.12.2008.*

B. Which authority approved shifting the project to the left bank?

In his letter dated 22.02.2011 to the Deputy Commissioner, Chamba, the Chief Engineer (I&P) of HPSEBL had given technical, geological, social, environmental and economic reasons (including the “very difficult to mitigate” drying up of drinking water sources) for disproving the proposed shift of the project components from the right bank to the left bank. Concluding the report, the HPSEBL Chief Engineer had said:

“In view of above stated facts, HPSEBL has considered the right bank of river Ravi suited for the construction of the project taking into consideration of all the aspects necessitated for economical and social consideration. As such, there seems that no aspects substantiated to shift the project to left bank as proposed by the IPP (Independent Power Producer) by quoting various self vested reasons/grounds please”.

The opposition of the locals is **not** to the project itself; it is to arbitrary manner in which the project has been shifted from the barren and uninhabited right bank of the river Ravi to the heavily populated and vegetated left bank, which also sustains their prosperous orchards and dense forests. One thing that was amply clear during the fact-finding visit was that the villagers have not been consulted during the process and their concerns have not been addressed. All they knew was that the company had found that constructing on the right bank would be too expensive to construct on and it was because of this that the project had been shifted.

When and who decided that such a shift was necessary? What were the factors they considered before granting such approval?

a. Expert Appraisal Committee (River Valley Projects) (EAC, RVP)

As has been stated earlier, as per the EIA Notification, 2006, the whole process of grant or denial of environmental clearance, including the issuance of ToR, consideration of the EIA report, etc., are actually undertaken by the EAC. It is only based on the recommendation of the EAC that the MoEF can issue ToR or the final environmental clearance. In the case of the Bajoli-Holi Project, the ToR was approved by the EAC

was for the right bank design. As shown above, the so-called No Objection issued hurriedly by the MoEF was without any consultation with the EAC.

The issue actually came up before the EAC only 2 years later, when it considered the project for final clearance on 20-21 December 2010. The Minutes of the EAC meeting on 20-21 December 2010, notes as follows:

“However, the EAC was informed through geological map of the area that the surface power house complex located along a ridge having phyllite, quartzitic phyllite bed rock on the left bank of Ravi river. The proposed site is already shifted from right bank to left bank. Considering the geological formation and less infrastructure work, the Committee accepted the clarification.”

(Emphasis supplied)

Therefore, while the EAC accepted the change, it was in fact confronted with a *fait accompli* situation. Further, this approval was not based on any assessment on the feasibility of project on the left bank vis-à-vis the right bank. It only had for its consideration the final EIA Report which was based only on the left bank.

It is surprising that the EAC ignored the fact that such a major change had occurred subsequent to its approval of the ToR. The project had now shifted to an area with considerable habitation and forest and horticultural resources. The ToR issued to the company was based on the assumption that the right-bank had no forests or inhabited areas.

- *Could the EIA have been considered valid in absence of specific ToR to cover the new aspects which needed to be studied in the light of this shift?*
- *Was the company and the MoEF authorised to affect such a major change without the approval of the EAC, a body constituted specifically for the purpose of assessment of impacts of projects?*
- *Why did the EAC not pose any question to the company or the MoEF in this regard?*

b. Central Electricity Authority (CEA)

The High Court, while deciding upon the writ petitions, proceeded on the assumption, based on the submission by the Company, that the CEA is the only Authority to accord techno-economic concurrence to hydro-electric schemes with a budget of over Rs. 500 Crores; and that in the present case, it had granted the necessary approval.

However, the reply-affidavit filed by the CEA in the Review Petition before the High Court makes it clear that it did not in fact consider, compare, or apply its mind in any way on the impacts of shifting of the project from the right bank of the river to the left bank. In fact, these issues are far removed from the techno-

economic considerations that CEA is supposed to apply its mind to and were not placed before the CEA at all. In its reply affidavit³ it has squarely placed the onus of such an appraisal on the State Government:

“4. CEA accords concurrence to hydro electric schemes based on the information provided in the Detailed Project Report. In case of Bajoli Holi HE Project, after it was concluded by the project developer and Government of Himachal Pradesh, for locating the project components of left side of the river Ravi, the detailed investigations had been carried for project components on the left side of the river and incorporated in the DPR.

.....

7. As such, **shifting of project components from right bank to left bank is sole responsibility/choice of Government of Himachal Pradesh / project developer** and concurrence has been accorded only on the basis of **detailed submission made for left bank.**”
(Emphasis supplied)

Thus, clearly, any approvals granted by the CEA were not based on any assessment on the feasibility of project on the left bank vis-à-vis the right bank and it is the responsibility of the State Government to undertake such an assessment in public interest. Unfortunately, the High Court, in the Review Petition, relied only on the factum of the techno-economic approval and failed to appreciate that the issues of left bank versus right bank was never before the CEA and that the only competent agency of the State Government for this purpose, the HPSEBL, had on two occasions (see footnotes No. 8 and 21 in Appendix 1) disproved the idea of the shift of project components on various geological, social, environmental and economic considerations.

C. Why was no Cumulative Impact Assessment (CIA) undertaken?

On 08.07.2011, the MoEF accorded in-principle (or stage I) approval for diversion of 75.303 Ha of forestland for the project proponent based upon a set of 18 conditions as recommended by the Forest Advisory Committee (FAC). The condition no. 5 of the approval states:

“A cumulative study may be carried out by the State Government on behest of all project proponents on River Ravi to assess the impact on landscape in general, wildlife and ecological aspects before final sanction is accorded. The FAC seeks special emphasis on the issues of forest fragmentation and landscape level changes due to direct and indirect impact of the project. The study should take into account to micro-hydel projects, existing and proposed in the project basin may be provided with maps.”

³ CEA’s reply is available at http://www.himdhara.org/?attachment_id=1113

On 29.8.2011, MoEF, issued a letter to the Government of Himachal Pradesh reporting modification of condition no.5 of the Stage-I approval for the project. The modified condition read thus:

“A cumulative study may be carried out by the State Government on behest of all project proponents of Ravi River to assess the impact on landscape in general, and wildlife and ecological aspects in specific and the user agency shall submit an undertaking to comply with the additional conditions that the Central Government may stipulate based on outcome of the said study. Issues of forest fragmentation and landscape level changes due to direct and indirect impact of the project shall be specifically dealt in the said study. The study should also take into account on micro-hydel projects, existing and proposed in the project basin may be provided with maps.”

In its judgment the High Court ruled:

“As is noticed, the said condition came to be modified by the Competent Authority. Notably, it is not the case of the petitioners that the said Authority could not have modified that condition. Nor it is possible to disregard the justification given in the response filed before this Court by respondent No.2.⁴ In that sense, the modification effected by the Competent Authority vide communication dated 29.08.2007, ought to prevail.”

It is apparent that the critical technical pre-condition of conducting a cumulative impact assessment study of all hydro projects, existing, under-construction or planned, in the Ravi basin prior to the grant of final forest clearance to the project was modified to accommodate the interests of the Project Proponent and the State Government. This is a dubious logic, in the light of recent disasters involving hydroelectricity projects; however, this went unquestioned by the Court.

In order to come to its inference on this account, the Court had also relied upon some old NoCs of 2009-10 issued by 4 out of 5 project affected Gram Panchayats. These NoCs have no mention of FRA; one of them issued by Holi Gram Sabha on 19.07.2009, had been annulled by the Gram Sabha on 04.04.2010, much before the petition was filed in the High Court. The court had also placed reliance upon a letter, along with which the proceedings of the Public hearing for the project had been sent by the Member Secretary, HP State Pollution Control Board dated 18.11.2010 to the Director (Environment, S & T), Department of Environment

⁴The State Government in its reply affidavit had stated:

“River basin studies of Satluj and Chenab rivers are in progress and the work of cumulative environment impact assessment study in basins of Beas and Ravi rivers are yet to be awarded to executing agencies by the Directorate of Energy to carry out the detailed study and that the measures required to be taken for overcoming the impacts which may be caused due to the implementation of the projects. Therefore, considering the importance and necessity of the implementation of the projects and the huge minority loss involved due to delay in implementation, the Government of India, i.e. respondent no. 1 had partially modified the condition No. 5 vide its letter No. F. No. 8-43/2011-FC dated 29th August, 2011 copy annexed as Annexure R-1.”

Science and Technology, Government of Himachal Pradesh. Neither of the documents relied upon by the Court have absolutely any bearing upon compliance with the condition related to the conduct of cumulative impact assessment of the Ravi basin. This condition had been specified on the basis of the recommendation made by an expert body, the Forest Advisory Committee. Clearly, this technical issue could have been only been addressed by complying with the condition of conducting cumulative impact assessment of the Ravi river basin and not on the basis of the NoCs of Gram Sabhas or on what transpired during the public hearings.

The Court did not appreciate these facts even when they were pointed out during the course of the review of its judgment.

D. What happened to the Forest Rights Act?

Since the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (henceforth 'Forest Rights Act') came into effect in 2008, rights under the Act have to be settled before Forest Clearance is granted to the project. The MoEF circular dated August 3, 2009, formalised the requirement of a set of documents to accompany any proposal for the diversion of forest land. It is required that proposals for forest clearance are accompanied, among other things, by certificates by the concerned Gram Sabhas indicating that all formalities and processes under FRA have been carried out and that they have given their consent to the proposed diversion and the compensatory and ameliorative measures, if any. This approval has to be passed with more than 50% members of the Gram Sabha in attendance, in order to have any validity. Compliance with the MoEF circular dated 3.08.2009, included as condition no. 16 of the stage I Forest Clearance (issued on 08.07.2011) for the project, was a necessary pre-condition to the grant of final forest clearance for the project. However, the basis on which this condition has been complied with before the final forest clearance was granted in this case is quite bizarre.

On 20.09.2012, Assistant Inspector General of Forests, MoEF (FC Division), Government of India informed the Principal Secretary (Forests), State of Himachal Pradesh that the Ministry had accepted the request of the Chief Minister, Himachal Pradesh, that in case of the state, a certificate issued by Collector cum District Commissioner of the District concerned stating that no claim under the Forest Rights Act exists on pending in respect of forest land, be considered as sufficient evidence to meet procedural requirement of the Forest Rights Act. It also stated that in order to ensure proper scrutiny in all such cases of forest clearance, stage-II approval will be accorded only after obtaining specific approval from the Competent Authority.

The request of the Chief Minister of Himachal Pradesh mentioned in the above letter dated 19.04.2012 states as follows:

In Himachal Pradesh, the position is that the Rights and Concessions on forestland throughout the State including the tribal areas have long been settled and recorded in Settlement Reports. These rights are inheritable through succession and local people/right holders have been enjoying them without any infringement, since their admission. The communities living in the tribal districts of H.P. do not fall in the category of Primitive Tribal Groups for Pre-Agricultural Communities specified for entitlement under this Act. These communities (ST and Others) are not even forest dwelling (Van–vasis/banbasis) communities.

Given the above position, it would be seen that the guidelines of the MoEF are adequately complied with in Himachal Pradesh. However, certificates issued by Collector-cum-Deputy Commissioner of the District concerned that no claim under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is pending in respect of forestland and submitted along with the specific proposals for environment forest clearance is not being considered by MoEF as sufficient evidence to meet the procedural requirement of the Act. This is unduly delaying clearance of many development projects and specially hydel projects. [Emphasis supplied]

On 04.10.2012 The Collector-cum-Deputy Commissioner, Chamba, issued a certificate stating that the process under Forest Rights Act had been carried out for the 75 hectare land to be diverted for the project and that

“... there is no Primitive Tribe Groups (Schedule Tribe) and Pre Agriculture Communities (Other Traditional Forest Dwellers) were available on the proposed forest land proposed to be diverted and whose Forest Right Act, 2006.

3. It is certified that on the basis of field verification there are no such facilities managed by Government requiring diversion of Forest land under section 3(2) of Forest Rights Act, 2006 exist over the forest land proposed for diversion.”

Crucially, no evidence was enclosed along with this certificate to prove that Forest Rights Act claims had been settled in the area. In fact the letter does not even mention the dates on which the process was initiated and completed. The letter makes no mention about the proposal for diversion having been placed before the concerned Gram Sabhas. Further, the letter also does not inform that the people of the 5 affected Gram Sabhas have customary rights, substantiated by revenue records, on the forest land to be diverted for the project and that those rights had not been settled. The Deputy Commissioner, being the Chairperson of the District Level Committee constituted under FRA should have known better since it was his responsibility to ensure under the sub-rule 3 of Rule 12 B (notified on 6th September, 2012,

almost a month before the DC Chamba issued the certificate) that the forest rights as provided under section 3(1)(i) of the Act⁵ are recognised.

It is on the basis of the above-mentioned certificate issued by the DC, Chamba, that the MoEF found the project to be compliant with all the conditions imposed at the time of granting the in-principle Forest Clearance, including the one related to Forest Rights Act.

This argument was raised before the High Court in the Writ Petitions. However, it was rejected by the High Court, not on merits but on the ground that neither the Communication from the MoEF dated 20.09.2012, nor the certificate issued by the DC dated 04.10.2012 has been specifically challenged, nor had any relief been claimed by the petitioners in this regard. The petitioners' contention that these documents came to their notice only through the reply affidavits filed by the respondents also found no favour of the court.

⁵ Relating to protection, regeneration or conservation or management of any community forest resource, which the forest dwellers have traditionally been protecting and conserving for sustainable use.

VI. OBSERVATIONS OF THE TEAM

A. *Actual physical comparison between the left and the right bank*

The visit to the area right up to the dam site at Bajoli reveals the serious issues being raised by the women protestors. The right bank comprises craggy rocky slopes, barren and uninhabitable, while the grassy left bank is buzzing with life, dotted with homes, shops, fruit orchards interspersed with terrace farms and forests. One could clearly see that the lives of the communities of the four panchayats (Holi, Kuleth, Deol and Nayagraon) are intrinsically bound to the land of their ancestors. The following villages lie in the project area along the left bank:

- **Gram Panchayat Holi** – Jharauta, Sutkar, Holi, Banoon, Andarla Gram, Helli, Majharan, Keen, Goshal.
- **Gram Panchayat Kuleth** – Kuleth, Guwad, Jabbal, Tooh, Bantoo, Tilla, Gwala.
- **Gram Panchayat Deol** – Deol, Bringti, Dhagreda, Kiur, Dyosad.
- **Gram Panchayat Nayagraon** – Nayagraon, Ghadoh, Navei, Chunhed, Togh, Thanetar.

On the other hand, the villages that lie on the right bank in the project area are:

- **Gram Panchayat Bajol** – Bajol: This village is directly above the dam site and would be affected regardless of the location of the tunnel on the right or the left bank.
- **Gram Panchayat Kuther** – Batola: The power house of the project was to be located in this village as per the right bank design. The construction could have avoided the populated portions of the village by appropriately positioning the location of the power house.

Just a naked-eye comparison of the two-banks itself is sufficient to show that the demands raised by the protesting women are not baseless and must not be brushed aside, least of all without providing the local community with a detailed explanation of why their lives and livelihoods must be jeopardised when an option which would cause less damage to life, livelihood and property is available.

B. *Fears and demands of the women protestors*

The fear of the communities is essentially related to the negative consequences on livelihoods, as hydropower tunnels have directly impacted water sources in many other projects. Additionally, the evacuation of Mokhar village affected by massive seepages in the tunnel for Chamera III has been the main trigger of the demand for realignment. The women clearly foresee that this area may be susceptible to such a disaster as well.

The women – and indeed the entire community – are *categorical in stating* that they are not against the construction of the hydro-power project. **Rather, they are against their homes and livelihoods being destroyed, in a place where there is an alternate site available to bore the tunnel and build the power house that will cause no damage to their lives.** Their demand is clearly for re-alignment of the tunnel and its shifting back to the *original plan* of construction on the right bank.



Men and women gathered at Holi Village to appraise the fact finding team members about their objections against the project.

C. ***Living conditions and challenges at the protest site or dharna sthal***

About one hundred women sit peacefully in protest at the construction site. Since April 2, 2014, they have been maintaining a 24 hour vigil on a steep hill slope in tough weather conditions (rain, cold and heat). Their “shelter” consists of about 4 sticks stuck in the rocky ground, with a yellow tarpaulin fixed on top. This “tent” is open to the elements on three sides. They fetch water from a tiny stream nearby, clambering over rocks to get there and back. The women cook together with ingredients that they bring from their own homes. Obviously, there are no toilet facilities at the site. About eighty or ninety women sit in vigil in the daytime, while about ten women protest at night. The night protestors sleep on thin mattresses that they spread out and use *razais*, in a vain attempt to beat the cold. The challenges they face are huge:

- *Socio-economic consequences:* On a daily basis, the women leave behind children, livestock, livelihoods and families and head to the construction site in their quest for justice. How long will they be able to sustain this action?

- *Political and other pressures:* Local contractors, administration and politicians, with the support of the company officials and the police, are creating an atmosphere of intimidation and fear. The protestors are being pressured to give up their struggle through various tactics like direct intimidation. Despite this the women continue their protest with quiet determination. How long will they be able to hold out against these forces that have economic and financial backing?
- *Security:* They sit perched atop a hillside, open to threats, coercion or attack during the day or night. With the increasing threats from the contractors, company officials and police, there are grave concerns about the physical safety and security of the women. How long will they be able to sustain their spirit?

D. *The duration of the struggle*

The protestors are clear that they will continue their 24 hour vigil until there is relief in the matter, a promise to review the decision of re-alignment and a stay on the project construction activities.



Local women raising their concerns and objections with the local media at a press conference organised in Chamba town on April 17, 2014.

VII. RECENT DEVELOPMENTS AND THREATS TO WOMEN

- The women's crusade against the project tried to use the pre-election atmosphere to leverage support from various political parties by appealing to them to support their cause.
- Meanwhile, the officials of the District Administration, local politicians, contractors and project managers have been visiting the dharna site regularly, in order to pressurise them to call it off. After the women were released on bail, a day subsequent to their arrest on March 25, 2014, they went back at the dharna site, to continue their peaceful and non-violent protest.
- On April 2, 2014, the women decided to initiate night time vigil at the protest site in order to preempt the contractors laying out dynamite for road construction at night.
- On April 10, 2014, the women were targeted by the contractors of the project proponent by unleashing an air compressor hose on them while they were peacefully talking to the police personnel at the construction site. Out of the four women who sustained injuries, one was serious enough to have been referred to the District Hospital.
- On April 12, 2014, local women protested the illegal damage to forest property and trees due to widening of road carried out by a private contractor Kishori near Kee Nala on Chamba-Holi road. The local contractor Kishori Lal threatened them with consequences.
- On April 13, 2014, the local reporter of Amar Ujala, Daleepa Ram, was attacked by local contractors. He had received death threats on two occasions before this for reporting on the issue.
- On April 29, 2014 the local MLA and State Forest Minister, Thakur Singh Bharmouri, came to the dharna site along with some project contractors. The women were threatened with arrest unless they gave up their dharna.
- On June 6, 2014, the Company officials intimidated the local women to move from the protest site
- On June 7, 2014, the Naib Tehsildar accompanied by the Station House Officer visited the women at the dharna site seeking a meeting with them. The women gathered and met them on June 9th, when they were again told to call off their dharna or face legal action. The women presented to the Naib Tehsildar the legal position vis-à-vis their protest. They had earlier conveyed the same to the Deputy Commissioner through a letter sent on April 5, 2014. They, however, did not get a reply to the letter.
- On June 16, 2014, the Additional Deputy Commissioner Bharmour accompanied by the Station House Officer visited and met the protesting women at Holi pressed a single point agenda with them – that of giving up the dharna or face arrest.
- On June 18, 2014, a notice from the Deputy Commissioner was served upon the women to vacate the dharna site within 24 hours or face legal action.

VIII. RECOMMENDATIONS

- The demand of the Holi Ghati Sangharsh Samiti should be instituted; i.e., that the hydropower project site be moved from the left bank to the original site, the right bank.
- The cases/charges filed against the protestors should be dropped.
- The report of the High level committee constituted by the Directorate of Energy, Government of Himachal Pradesh, that visited the area in 2013, should be made public.
- Action should be taken with regard to the cases of unauthorised tree felling by GMR's contractors.
- The Cumulative Impact Assessment for the Ravi river basin needs to be undertaken before new projects start construction and any further clearances are granted.
- A multi-disciplinary autonomous committee should look into the aspect of re-alignment and make a site visit for the same. Until then, all construction activity for the project should be halted.
- The police and the para-military force deployed in the area at the behest of the Company should be immediately withdrawn.