

Request for Inspection

India:

**Coal Sector Environmental and
Social Mitigation Project
(Credit No. 2862-IN)**

The Inspection Panel

Investigation Report

PREFACE

The Inspection Panel was created in September 1993 by the Board of Executive Directors of the World Bank to serve as an independent mechanism to ensure accountability in Bank operations with respect to its policies and procedures. The Inspection Panel is an instrument for groups of two or more private citizens who believe that they or their interests have been or could be harmed by Bank-financed activities to present their concerns through a Request for Inspection. In short, the Panel provides a link between the Bank and the people who are likely to be affected by the projects it finances.

Members of the Panel are selected “*on the basis of their ability to deal thoroughly and fairly with the request brought to them, their integrity and their independence from the Bank’s Management, and their exposure to developmental issues and to living conditions in developing countries.*”¹

The three-member Panel is empowered, subject to Board approval, to investigate problems that are alleged to have arisen as a result of the Bank not having observed its own operating policies and procedures. Therefore the Panel investigates the actions of Bank Management, and not those of any other parties, including the borrower.

In the current case, the Panel found the Requesters and Request for Inspection eligible for an investigation and recommended that the Board of Executive Directors authorize it to carry out an investigation. The Board approved the investigation.

As with all investigations this report, which contains the Panel’s findings, is being submitted to the World Bank Board of Executive Directors. The report is also transmitted to the Bank Management who will have six weeks to determine what recommendations, if any, it will make to the Executive Directors to address the Panel findings.

Once the Board has come to a decision, the Panel will inform the Requesters, and Bank Management will make public this Investigation Report, the Management’s Response to the Panel’s findings, and the Board’s decision. The Panel will also place these documents on its website, where those interested will also find further information about the Panel, its processes and its operations. The Panel’s website address is: www.inspectionpanel.org.

¹ See IBRD Resolution No. 93-10; IDA Resolution No. 93-6.

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The Panel wishes to thank the Requesters' representative CASS, and other individuals for all of their assistance during this investigation, especially during its field visits, as well as the many people it met in Parej East and Ranchi. It appreciates their continuous cooperation and their effort in responding to the Panel's many requests for information and documents.

The Panel wishes to thank Government officials for their time, officials of Coal India Ltd. and of Central Coalfields Ltd. for their time and assistance.

The Panel also wishes to express its appreciation to current and former Bank staff in Washington D.C. for their continuous cooperation and for responding to the Panel's many requests for information and documents. The Panel thanks the World Bank Country Director, and his staff in New Delhi for their invaluable time, assistance and cooperation.

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ABBREVIATIONS AND ACRONYMS

ASTHR	Asia Technical Human Resources
CASS	Chotanagpur Adivasi Sewa Samiti
CBA Act	Coal Bearing Areas Act of 1957
CCL	Central Coalfields Ltd. in Jharkand (formerly part of Bihar)
CD/R&R	Community Development/Resettlement and Rehabilitation Officer
CGM	Chief General Manager, Coal India Ltd.
CIL	Coal India Ltd. (a public sector enterprise of the Government of India)
CMC	Coordination and Monitoring Committee
CSESMP	Coal Sector Environmental and Social Mitigation Project [also called ESMP]
CSR	Coal Sector Rehabilitation Project
DCL	Development Consultants Ltd.
EAP	Environmental Action Plan
ECL	Eastern Coalfields Ltd.
EMP	Environmental Management Plan
EPAP	Project-Affected Person entitled to economic rehabilitation assistance
ESRP	Environmental and Social Review Panel
GOI	Government of India
IBRD	International Bank for Reconstruction and Development
IDA	International Development Association
IMC	International Mining Consultants, Group Consulting Ltd.
IPDP	Indigenous Peoples Development Plan
MCL	Mahanadi Coalfields Ltd., Orissa
MoC	Ministry of Coal
MoEF	Ministry of Environment and Forests
NCL	Northern Coalfields Ltd.
NGO	Nongovernmental organization
PAFs	Project-affected families
PAPs	Project-affected persons
PIC	Public Information Center
R&R	Resettlement and Rehabilitation
RAP	Resettlement Action Plan
SAR	Staff Appraisal Report
SEIA	Sectoral Environmental Impact Assessment
SECL	Southern Coalfields Ltd
TISCO	Tata Iron and Steel Company
VWG	Village Working Group in an IPDP target village
WCL	Western Coalfields Ltd.
XISS	Xavier Institute of Social Service, facilitating NGO in Parej East

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EXECUTIVE SUMMARY

1. The Coal Sector Environmental and Social Mitigation Project (CSESMP) was designed to assist Coal India Ltd.'s efforts to mitigate the environmental and social impacts of mining expansion to be undertaken in 25 mines under the Coal Sector Rehabilitation Project (CSR). After being tested over a five-year period financed by the Bank, Coal India Ltd. was expected to apply the experience in more of its 495 mines. It was initially conceived as a component of the CSR. Starting in 1990, preparation began with the aim of supporting India's reform and expansion of the coal sector. Mitigation of the resulting environmental and social impacts was initially a part of this Project. Subsequently, in November 1995, the project was split into an environmental and social component, the CSESMP, and an investment component, the CSR.
2. In May 1996, the International Development Association (IDA) granted a Credit of US\$63 million to finance the CSESMP. The Credit was due to close on June 30, 2001, but it was extended to June 30, 2002. At that time, about US\$24 million was undisbursed. The associated CSR investment loan was approved in September 1997 and cancelled in July 2000. The CSESMP, however, continued.
3. This Report concerns only the Parej East mine, owned and operated by Central Coal India Ltd. (CCL), a subsidiary of Coal India Ltd. (CIL), where two villages, Parej and Durukasmar, are affected by mine expansion operations.
4. The Request for Inspection was submitted on June 21, 2001 by Ms. Bina Stanis of Chotanagpur Adivasi Sewa Samiti (CASS), a local nongovernmental organization (NGO) representing residents of Parej East. The Requesters claimed that they had suffered harm as a result of failures and omissions of IDA in the design and implementation of the CSESMP in Parej East Project area. They claim that their rights to participation and consultation were effectively denied them. The Requesters believe they have been deprived of fair and adequate compensation for their lands and villages. They have focused their key complaint on the failure to restore their income levels. Although previously landowners, they now claim to be living in colonies without legal possession of any land, where their former skills are no longer applicable, their productive sources dismantled, and their supporting networks and kin groups dispersed.
5. This harm is alleged to be the result of the Management violating various provisions of the following Bank policies and procedures: Involuntary Resettlement (OD 4.30), Indigenous Peoples (OD 4.20), Environmental Assessment (OD 4.01), Project Supervision (OD 13.05), Disclosure of Information (BP 17.50), and Management of Cultural Property (OPN 11.03).

6. In its Response of July 2001, Management maintained that the Bank had complied, and intended to continue complying, with the relevant policies and procedures related to the design and implementation of the CSESMP.
7. After reviewing Management's Response and visiting the Project area, the Panel recommended an investigation to the Board of Executive Directors. The Board approved the Panel's recommendation on September 7, 2001.
8. Subsequently, on January 11, 2002, the Panel sent Management two documents from the Requesters, which had been received too late to be considered during the eligibility phase. On April 4, 2002, Management commented on these documents in the form of a Second Response. After examining this second Response (Annex 3 to this report), the Panel considered it necessary to ask Management for clarification of two major issues. These clarifications were received on October 2, 2002.

Involuntary Resettlement

9. The Project involved the potential involuntary resettlement of over 2,500 families of whom 227 were in Parej East. More than 10,000 Project Affected People were entitled to income restoration, 628 of whom were in Parej East. Over 6,500 were targeted for self-employment assistance of whom 202 were in Parej East.
10. A basic contention of the Requesters is that the design of the Parej East subproject has been flawed from the very beginning. Before the CSESMP was approved, they pointed out the need for a regional area-wide impact assessment of the effects of other local mines to aid in present and future planning. However, Management explained that this was not within the scope of the CSESMP.
11. In April 1994, Coal India Ltd. prepared and adopted a new corporate Resettlement and Rehabilitation (R&R) policy. In accepting it, Management decided that it would need to review the RAPs for each of the 14 mines after they had been prepared in order to satisfy itself that they were in compliance with OD 4.30.
12. The Panel observes that an area-wide plan for each of the 14 mines with involuntary resettlement was not a requirement of Coal India Ltd.'s R&R. At the same time, however, given the fact that in the future additional mines are expected in the area of Parej East, the preparation of an area-wide plan would have been a prudent course to take and might well have revealed many of the problems that have confronted Management.
13. **The Panel finds that the original RAP for Parej East did not reflect the actual situation in Parej East and was not location-specific as required by Management when it approved Coal India Ltd.'s R&R policy. In the Panel's view, Management's failure during appraisal to ensure that the original RAP reflected reality on the ground resulted in many problems that are at the root of the Requesters complaints. In light of this, the Panel finds that**

Management’s appraisal of the Parej East RAP was not in compliance with paragraph 30 of OD 4.30.

Level of Compensation for Land

14. A basic principle of OD 4.30 is that displaced persons should be compensated for their losses at full replacement cost prior to the actual move. **The Panel finds that, in Parej East, many of the displaced Project-affected persons (PAPs) have not been and are not being compensated at full replacement cost, with the result that many of them have suffered and continue to suffer harm.**
15. The Panel notes that although the Indian Land Acquisition Act reflects the principle in OD 4.30 that PAPs should be compensated for their land at its “market value,” in practice, it defines “market value” to be the registered value of plots in official land records. Since, as a rule, these values are substantially under-reported, **the principle is effectively disregarded and the PAPs are usually compensated at considerably less than replacement cost, even with the customary 30 percent ‘solatium’ paid in addition to “market value.”**
16. **When affected landholders are not satisfied with compensation decided by CCL and the District Authorities, they may seek a decision to increase the amount from a special tribunal, constituted under section 14 of the Coal Bearing Areas Act. In this regard, the Panel considers it revealing that, in all cases so far finalized in Parej East, the Tribunal has awarded increased compensation to those PAPs able to lodge an appeal. In the Panel’s view, it is not appropriate that PAPs should have to go through a lengthy and costly judicial processes to get just compensation, especially since not all PAPs can afford the direct costs of an appeal process and, even if they could, they would end up losing unless the costs of the appeal were added to their award. Even then, the delays and uncertainties associated with the process could result in tangible harm, especially since the awards are subject to further appeal by CCL. It is unfortunate to note that CCL is appealing all these decisions. In light of this, the Panel finds that Management was not in compliance with paragraph 3(b) of OD 4.30.**
17. There is another problem: the lack of transparency in the compensation process. **In the Panel’s view, it is clear that, as the Requesters claim, the compensation process in Parej East was and is not transparent. In light of this, the Panel finds that Management is not in compliance with paragraph 8 of OD 4.30.**

Level of Compensation for Houses

18. Paragraph 14 of OD 4.30 requires that valuation of all assets be made at replacement cost. Since many of the oustees’ original houses were constructed a long time ago, depreciation at 1.6 percent a year could be significant, in spite of the price escalation of five percent. Moreover, in view of the fact that housing costs

have risen since their original houses were built, it is likely that the difference between the depreciated value of their old houses and the replacement cost of a new house could be significant. **In the Panel's view, both the process and the basis for house compensation is open to abuse and raises serious questions, as in the case of compensation for land noted above.**

19. In April 2000, Coal India Ltd. made a major change that gives the PAPs an additional option. They may take a one time cash grant of Rs50,000 in lieu of a house plot in the resettlement site. This grant is in addition to the above-noted compensation for loss of homestead land and house. Since then, as Management notes, 82 Project-affected families (PAFs) have chosen the cash option to relocate elsewhere than the resettlement site. This means that since early 2000 all PAFs have chosen cash.
20. **In the Panel's view, it is difficult, if not impossible, to reconcile the Bank's aim of development with a one time cash grant for acquisition of home and land. Presenting a poor oustee, whose previous source of survival included a small patch of land, with a check may be a legal way of getting them to move on, but it should not be confused with development. The Panel highlights that the ESRP has recommended that the Bank commission a post-Project audit to assess the long-term results of the cash settlement approach.**

Resettlement Sites

21. Management explains that resettlement sites compensate for loss of villages. There are two resettlement sites for Parej East. The main one is Pindra, where around 20 PAFs have settled. The other is Prem Nagar where three PAFs have settled.
22. Concerning the **choice of sites**, the PAPs generally complain that they had never been consulted in their selection. They were guided to a pre-selected site and told to move there. **The Panel finds that the PAPs in Parej East were not consulted in the selection of the Pindra resettlement site as required by paragraph 8 of OD 4.30 and that Management was not in compliance with the OD in this respect.**
23. Concerning **causal labor opportunities**, OD 4.30 provides that “[f]or land-based resettlement, the new site's ... locational advantages should be at least equivalent to those of the old site.” The Requesters claim that Pindra is further away from causal labor opportunities. Management only mentions the labor opportunities for Pindra resettlers at the coal-loading dump, not opportunities for causal labor or informal labor at the mine site, which is about three km. This lack of opportunity appears to be confirmed by the fact that PAFs who were moved to very substandard temporary accommodation (barracks) to allow them some months to build their houses at Pindra have not yet moved there about three years later.
24. **The Panel visited the barracks beside the CCL Headquarters and observed that the conditions are pathetic, as the Requesters claim: they are hardly fit for**

human habitation, especially families. Even so, however, it would now appear that the seven PAFs regard remaining there a better alternative than building a house in Pindra because of the proximity of the barracks to causal labor opportunities and the informal economy at the mine site.

25. Concerning the **size of plots** offered to the PAPs, OD 4.30 provides that planning for shelter, infrastructure, and services should take into account population growth. Management accepted Coal India Ltd.'s R&R policy on the clear understanding that it would have to review each RAP to be sure it contains the obligatory requirements for a successful RAP. **The Parej East RAP simply repeated Coal India's R&R policy in respect of the size of plots, and did not provide for second-generation growth or land for gardens and animals. The Panel therefore finds that Management's appraisal of the Parej East RAP was not in compliance with paragraphs 13 and 19 of OD 4.30. However, in practice, Management immediately recognized this flaw, and in response to CASS insistence, CCL allocated plots twice the size of that provided for in the RAP. In addition, since implementation commenced, Management has continued to press Coal India Ltd. to change its policy.**
26. Concerning **potable water**, based on the Panel's review of the records available, it seems clear that the date set for the families to move to Pindra, December 15, 1999, was dictated by the scheduled mine expansion and that they were moved without establishing whether potable water was available at Pindra. **For failing to ensure access to potable water before the PAPs were moved to the Pindra resettlement site, the Panel finds that Management was not in compliance with paragraph 19 of OD 4.30.**
27. Concerning **access to health care**, the Panel finds that in the absence of statistics to show that morbidity and mortality in Parej East might be outside the norm, it is extremely difficult, if not impossible, to ascribe any alleged increases to the Project.
28. Concerning **schools**, in December 1999, the PAPs from Borwa Tola were involuntarily relocated some distance away to Pindra. There they found a school building with no teachers, despite OD 4.30 and promises to the contrary. **The Panel therefore finds that Management was not in compliance with paragraph 19 of OD 4.30 in this respect.**
29. **The Panel recognizes, however, that the current situation differs completely from that anticipated in 1999. With the late 1999 introduction of cash compensation, and the real prospect that the population of the Pindra site will not increase beyond about 20 instead of about 227 families, a new approach is needed.**

Cultural Property

30. The Requesters raised several issues concerning cultural property, including two sacred groves (sarna) in the hamlets of Ganju Tola and Majhi Tola, a sacred grove in Borwa Tola, and the tribal graveyard of Pare, all of which are located in the path of mine expansion.
31. Management explains that the Sectoral Environmental Assessment for the Project did not identify any issues related to cultural property, and OPN 11.03 on Management of Cultural Property in Bank-financed Projects was therefore found not to apply. Nevertheless, when issues have been raised by PAPs regarding sites of religious importance, Management maintains that they have been dealt with in a manner consistent with OPN 11.03.
32. **While there are irresolvable issues related to cultural property management, in the Panel's view, Management has acted responsibly in consulting local people, and has acted in good faith in attempting to mitigate the issues. It therefore finds Management in compliance with OPN 11.03.**

Title to House Plot

33. OD 4.30 requires that in the case of both rural and urban resettlement, the borrower needs to make legal arrangements for transferring titles to resettlers. The Requesters claim that PAPs are living in a resettlement colony without legal possession of any land whereas before they were landowners. Management acknowledges the problem.
34. The records show that the supervision teams have consistently reiterated Management's expectations that an appropriate solution would be found. Nevertheless, as Management acknowledges, the issue is still unresolved. The December 1998 Aide Memoire acknowledged that not only does the lack of pattas leave people with a sense of insecurity, but also it prevents them from accessing finance for income generation schemes. As a result, implementation of these schemes is undermined.
35. **It is clear that the question of title transfer should have been identified and dealt with when the Parej East RAP was prepared, as required under OD 4.30. CCL had already purchased the Pindra resettlement site by that stage. Now, up to four years after affected people have been involuntarily resettled they are still suffering the harm that results from lack of title, including a sense of insecurity and, as Management itself has stated, an inability to borrow for self employment income restoration schemes. The Panel finds that Management was not in compliance with paragraphs 13(c) and 14(a) of OD 4.30 when the RAP for Parej East was prepared.**
36. **The Panel recognizes that the supervision missions have raised the issue repeatedly. The Panel has not been able to ascertain whether a renewable 30-**

year lease provides the same security of tenure as the 99-year lease that Management demanded. It is understood that Management is continuing to follow this issue closely through arrangements for post-Project monitoring and reporting.

The Grievance Mechanism

37. **Since a grievance mechanism was established in Parej East and appeals process described, the Panel finds that Management is formally in compliance with paragraph 17 of OD 4.30. However, Bank staff were unable to confirm that any independent person was on the grievance committee. The Panel is also concerned that it was unable to establish whether or not PAP members are elected democratically, or are selected by authorities.**

Traditional Land Rights

38. The story of traditional land rights in Parej East reveals a serious failure to comply with the relevant Bank policy provisions. In proceeding with the CSESMP, Management apparently expected (and Coal India Ltd. agreed) that the PAPs, including the tribals, would be treated in accordance with Bank ODs 4.30 and 4.20 with respect to compensation for land cultivated under traditional rights. Yet, when implementation commenced it became apparent that the laws of Bihar precluded automatic recognition of such rights. The Panel finds it difficult to understand how, at the time of preparation, Management could be unaware of this. Furthermore, it seems clear, however, that during preparation, Management did not raise any questions about the possible lack of legal recognition of traditional land rights, or the process required to ensure compensation for tribals cultivating traditional land without title or documentation.
39. Legal recognition of traditional land rights is a serious problem. In Bihar (and now Jharkand) authentication by state authorities is required. During its field visit, the Panel was told that this process was and is not on the District Administration's priority list, so it continues to be delayed, with the resulting serious consequences for the PAPs. Nearly eight years after adoption of the Coal India Ltd. policy, and the RAP for Parej East, about 150ha. out of a total of about 167ha. claimed by tribals "*cultivating land under tradition rights*" have not been settled. This is extremely serious, in the Panel's view, and needs immediate action.
40. **The Panel finds that Management was not in compliance with paragraph 17 of OD 4.30 and paragraphs 15(c) and 17 of OD 4.20, in connection with the preparation of the Parej East RAP. At the same time, the Panel recognizes that after this flaw was raised by CASS and international NGOs, Management acknowledged the problem. It raised the issue to the level of a cross-conditionality under the CSR loan. And, since then, it has worked with persistence to try to get the matter resolved.**

41. The Panel questioned Management on this and received a response in mid October 2002. The Panel notes that there are two villages in Parej East, Parej and Durukasmir. With respect to Durukasmir village, the Management Response is clear and no PAP's have yet been relocated. For the village of Parej, the Management Response appears to deal only with one of the hamlets of Parej, namely Borwa Tola. This hamlet no longer exists so clearly every PAP has been relocated. Apparently six tribals from Borwa Tola claimed they were cultivating GMK land. Of these, two claims were rejected. Of the four claims approved two were paid compensation before relocation, one was not paid before relocation due to a bureaucratic error, and one had died but their heirs have not been informed of the claim. This response informs that 18 non-tribal PAPs apparently from Borwa Tola claimed they were also cultivating land under customary rights. This response does not state whether compensation was paid, **before** their relocation, to the seven whose claims were authenticated. Of the 11 whose claims were rejected, Management could not discover the status of the appeal lodged by eight of them, so it would appear that they have relocated before a decision on their appeal. Finally, all three times Management has addressed this question in its response, it mentions that for Parej village a total of 8.17ha out of 59.5ha has been authenticated and that claims regarding the other 42.44ha remain to be settled. None of the answers provide any further information on this, so the Panel does not know how many PAPs are involved, which hamlets of Parej village they are from, and whether or not they have been relocated. **For the above reasons, the Panel notes that Management has failed to provide the Panel with evidence that it has complied with the OD 4.30 with regard to the compensation of PAP's who own land under traditional or customary rights, prior to their relocation.**

Forest Resources

Access to Forest Products

42. The Requesters claim that the basis for the PAPs former non-formal economy was income from common property resources. However, as a result of the expanded mining, common property resources have been greatly depleted, and are not being replaced. Management points out that the depletion of forest resources has been caused by several years of mining in the Parej East area unrelated to Bank funded projects so there has been a decrease in dependence on such resources.
43. The Baseline Survey shows that there are no landless tribals because of the Chotanagpur Tenancy Act which prohibited the transfer of tribal land to non-tribals. It also shows that there are no tribals who depend exclusively on forest products. But it makes it very clear that most of the population, tribals and non-tribals were dependent, in varying degrees, on forest products for a portion of their income or for household use. The subsidiary occupation of 345 or 71.13 percent of the PAFs was collection of forest produce and it provided the third largest source of income, nearly ten percent.

44. **The Panel finds that the Parej East Baseline Survey provides information on the resource base of the affected population, including income derived from forest resources as required by paragraph 11(b) of OD 4.30. However, for failing to recognize the dependence of the tribals on natural resources vital to their subsistence and ensuring continued access to these resources, the Panel finds that Management was not in compliance with paragraph 15(a) of OD 4.20.**

Compensation for Loss of Access to Forest Products

45. **As provided for in paragraph 15(c) of OD 4.30 the RAP states that the Pindra resettlement site will provide equivalent access to the forest, but it fails to support this statement with any details about the adjacent forest including whether the forest will support the same income earning opportunities for the 227 families originally expected to move there, or whether the host community is prepared to share the resource. The Panel found no evidence to indicate that during appraisal Management ensured that access would be available or that access to the forest beside Pindra would provide PAPs who moved there with equivalent compensation for loss of their access to forest products. Because of this, the Panel finds that Management was not in compliance with paragraph 15(c) of OD 4.30 during Preparation.**

Income Restoration

46. **The Bank's objective in OD 4.30 on Involuntary Resettlement is to ensure that people who are displaced, benefit from the project. Displaced people must be assisted to improve or least restore their standard of living. In spite of significant efforts on the part of a number of people during implementation, these objectives have not been achieved in Parej East and, as a result, PAPs have been harmed and continue to suffer harm.**
47. **It is absolutely essential for the Bank to support difficult involuntary resettlement challenges, but the Panel would caution that unless they are matched by time, the early planning required by OD 4.30, and the resources and realism needed to achieve them, the poorest and most vulnerable of the people affected by a project may end up carrying a disproportionately heavy burden.**
48. **In light of the above, the Panel finds that, as Management itself recognizes, it is not in compliance with paragraphs 3(b)(iii) of OD 4.30 since, according to the April 2002 Management Response, the income of at least 21 percent of EPAPs in the Parej East subproject had not been improved, still less, restored.**

RAP Entitlements in Parej East

49. The Requesters maintain that three years after displacement the people of Turi Tola and Borwa Tola generally have not been given jobs or replacement land, and the self-employment opportunities have come to nothing.

Jobs in The Mine

50. During Project preparation and the early stages of project implementation, at least through late 1996, the records indicate that the Parej East PAPs were led to expect a mine job. In February 1997, the mine had expanded to within a few hundred yards of the hamlet of Turi Tola where the PAPs resisted relocation. At this point, the Bank supervision team noted the discrepancy between what the PAPs expected and the eligibility criteria in the RAP. They reported that the previous mine manager had given promises of jobs to PAPs with less than two acres of land.
51. **In the Panel's view, it is quite understandable that PAPs who opted for jobs in June 1994 should naturally expect to receive those jobs. Nor is it surprising that those who owned less than two acres continued to demand and expect jobs for land. It must have been a shock for them to discover otherwise when finally presented with the reality of their situation in early 1997. The Panel finds that Management was not in compliance with paragraph 30(e) of OD 4.30 during preparation and appraisal of the Parej East RAP.**

Land for Land

52. OD 4.30 states that preference should be given to land-based resettlement strategies for people displaced from agricultural settings. In April 2000, four years after the CSESMP Credit was granted, Coal India Ltd. revised its policy, essentially dropping the land-for-land option. Instead it provided for monetary compensation, in addition to land compensation, for those who lose land.
53. **Under the Bank's policy, the land for land option is not mandatory, but it is clearly preferred wherever possible. Under CCL's Parej East RAP, CCL was to offer assistance to PAPs to find replacement land. According to Management CCL received no requests for such assistance. But in the RAP some 117 opted for this assistance and 115 qualified. Management also indicated in its Response that a large number of PAFs found replacement land, indicating that, with effort, it could be obtained. The Panel finds that Management was not in compliance with paragraph 4 of OD 4.30.**
54. **In September 2000, Coal India Ltd. received advice from International Mining Consultants, Group Consulting Ltd., which, recognizing that Coal India Ltd.'s policy provides for nothing more than the cost of land, proposed that some transitional costs should be contemplated in any land for land proposal, such as legal fees related to land purchase and allowances to cover the period between**

the move and the first harvest. The Panel agrees and suggests that Management take this advice fully on board before commencing another similar project.

Non-Farm Based Self-Employment

55. **The Panel finds that Management failed to ascertain the adequacy or feasibility of the self-employment income rehabilitation strategy in the Parej East RAP during appraisal and, after a Market Survey was finally conducted in March 1998, it failed to ensure that the recommended follow-up measures were taken. In light of this, Management was not in compliance with paragraphs 24, 29, and 30 of OD 4.30.**

Income Restoration through Self-Employment

56. The Requesters contend that self-employment schemes have failed to restore incomes. In mid-1998, recognizing that non-farm self-employment schemes were limited, the current supervision team insisted that Coal India Ltd. find other alternative income generating schemes, suggesting that the most obvious was land based.
57. **During Project preparation and appraisal, Management relied almost entirely on non-farm self-employment as the strategy to regain standards of living, without assessing its feasibility for income restoration in Parej East. As a result, many PAPs in Parej East have failed to restore their living standard and incomes to their previous levels and consequently have suffered and continue to suffer harm. In light of the foregoing, the Panel finds that Management was not in compliance with OD 4.30 in this respect.**

Wage Labor

58. Coal India Ltd. R&R policy entitles sharecroppers, land lessees, tenants and day laborers to jobs with contractors stating that *“Contractors will be persuaded to give jobs to eligible PAPs on a preferential basis, where feasible.”*
59. The Requesters state that while a few PAPs find daily wage employment around the mine, the majority are not able to do so. According to Management, CCL has now *“made an agreement with the contractors who execute civil works contracts for the mine to employ PAPs as casual laborers.”*
60. **In the Panel’s view, it is positive that the supervision team’s efforts to get formal agreement to employ PAPs as casual laborers have finally succeeded and it is to be hoped that this will make quite a difference to some of the displaced families.**

Changing PAPs into Entrepreneurs

61. The PAPs in Parej East were being asked to make a huge adjustment in their lives. In the Panel's view, it was unrealistic to assume that, in the space of five short years, people affected by the project in Parej East, many of them poor tribals lacking social mobility, education, or an entrepreneurial culture, could be uprooted from their communities, transferred to a new one, provided with training for self employment, and some level of monetary compensation, and then expected to improve, or at least restore, their former living standards, income earning capacity and production levels. Doubly unrealistic when it is realized that, before this change can commence, the implementing agency, CCL, must itself undergo a significant change in institutional culture and build new capacity to undertake environmental, social and resettlement work. The Panel found evidence that, with the Bank's assistance, progress had been made in this regard, but much remains to be done.
62. **In the Panel's view it was a major planning flaw for the Bank not to have recognized that it was unrealistic to expect that the PAPs in Parej East could become entrepreneurs in five years. In accordance with paragraph 30 of OD 4.30 the feasibility of Parej East PAPs regaining their livelihood through self-employment should have been reviewed when the RAP was appraised.**

Rehabilitation before Displacement

63. In the case of Parej East, there was a lengthy time period between completion of the RAP in 1994 and actual displacement in 1998, 1999, and 2000. According to experts, this time gap is usually about two years, not four, five, or six. Two years seem a sufficient amount of time to have the income restoration plans well in place to accommodate PAPs before they shift.
64. **In the Panel's view, a feasible strategy for income generation should have been in place in Parej East at the time the RAP was prepared.**

Transition Period and Subsistence Allowances

65. The Requesters complain that many PAPs have lived and are living off their compensation money. Although income figures provided by Management as of July 2001 appear to show increases for some PAPs, the hardships and losses experienced by other PAPs during the period when they were without some income, is not known. The group of greatest concern are those 21 percent whose income has decreased.
66. A Bank expert on involuntary resettlement acknowledged that the Bank should require some sort of transition package, ideally cash income for a defined length of time that includes the period of retraining. Investment assistance after training was to be the central requirement of the 2002 RAPs.

67. On July 25, 2002, the Panel asked Management for a clarification as to whether the PAPs received the transition allowance' provided for in paragraphs 3.4.4 (A and B) of the Parej East RAP. In its response of October 16, 2002 Management provided data on PAPs who had received the Relocation Allowance (Part A of 3.4.4). According to Management, 30 PAPs have received this 'transition' allowance of Rs7000, but the Panel notes that there are PAPs that continue to suffer harm. **In the Panel's view, Management failed to ensure that the Parej East RAP made effective provision for support during a time-bound transition period after displacement as required by OD 4.30. Some PAPs have suffered harm by temporarily losing their standard of living and a number continue to do so.**
68. Management provided no data as to whether PAPs had received the Subsistence Allowance (Part B of 3.4.4). The Panel notes that Management's response of April 2002 asserted that "no PAP has received a subsistence allowance because the eligibility criteria have not been met." The R&R budget for Parej East, however, contains a line item for subsistence allowance/grant for the years 1994 – 1998. No such line item appears in the budget for years 1998-2002. Management has provided no explanation concerning the disposition of the monies allocated for the subsistence allowance/grant or the reasons why the PAPs were regarded as ineligible for this benefits or the procedures followed to arrive at this determination. The supervision reports made available to the Panel do not provide any further information on this matter. **The Panel finds that Management has failed to demonstrate that its has complied with paragraph 3(b) (ii) of OD 4.30 that requires that displaced persons "be supported during the transition period in the resettlement site."**

Alternative Income Generating Schemes

Related to the Coal Industry

69. Being given no legal right to coal supplies like company employees, the Requesters complain that the displaced PAPs have to resort to illegal acquisition of coal supplies, which makes them vulnerable to police action. Management notes that the CCL has never initiated any police action against the local population to prevent people from collecting coal for domestic use or for small-scale commercial soft coke production.
70. **In the Panel's view, given the comparative income advantage, it is not surprising that PAPs would prefer to engage in so called "illegal" coal trading activities. During its second visit, the Panel found that the current CCL Managing Director well understands the situation and shares the Panel's view that a way should be found to legalize the soft coke activity.**

Land Based Income Generation

71. Like the ESRP, the Panel believes that land-based income generation schemes would offer the most promising possibility for restoring or improving the lives of PAPs, in particular in Parej East. **In the Panel's view, the current Bank supervision team must be commended for recognizing that a land-based income restoration option was essential. Since doing so, the Team has made an impressive effort to have it adopted.** Noting the success of the one pilot in operation in another mine, the supervision team has recommended its immediate adoption in other subsidiaries. Unfortunately, this will not help the PAPs in Parej East.

Indigenous Peoples Development Plan

Separate IPDP for Tribals

72. Coal India Ltd. already had a community development program to cover vulnerable people and, during Project Preparation, Management proposed that CCL should restyle it to conform to the requirements of OD 4.20. Issued in September 1995, Coal India Ltd.'s revised Corporate Community Development Plan, or "generic IPDP" was to serve as an umbrella terms of reference for mine-specific IPDPs, setting out guidelines for their preparation. Management found it to be in conformity with the OD 4.20.
73. **The Panel considers that, while the Coal India Ltd. "generic IPDP" is not directed exclusively at tribals, the decision to include all vulnerable people in the context of a framework plan to be eventually applied to all 495 Coal India Ltd. mines was in conformity with OD 4.20.**

The Original Parej East IPDP

74. In late November 1995, the Asia Social Unit cleared the "generic IPDP" conditionally. It stated that "[a]ppraisal cannot be finalized until the mine specific IPDPs have been reviewed and found to satisfy the requirements of OD 4.20."
75. **In failing to require a review of IPDPs for all mines at appraisal, the Panel finds that Management was not in compliance with paragraph 18 of OD 4.20. Specifically, the IPDP for Parej East was not reviewed.**
76. Coal India Ltd. was to prepare location-specific IPDPs for each mine. Where a community consisted only of tribals, a tailor made IPDP would reflect their needs. Where a community was mixed, tribal and non-tribal, the benefits were to be directed to the vulnerable: tribals, women and youth.
77. **In the Panel's view, as recognized by the ESRP, the Parej East IPDP should have been responsive to local needs. It was not. Moreover, Management clearly**

erred in ignoring a local NGO report on the IPDP, especially since it did not itself review it. Having failed to review the Parej East IPDP, Management could not have assessed whether it was in compliance with paragraph 18 of OD 4.20 during appraisal. The Panel finds that Management did not ensure that the original Parej East IPDP was prepared in compliance with paragraph 18 of OD 4.20.

Annual Implementation Plans

78. Beginning in 1998, community development activities in Parej East were implemented under annual hamlet-specific IPDP Implementation Plans. Later, however, a Bank supervision mission found that the CCL employees and the NGO engaged to develop annual village-specific implementation plans understood that the original generic Parej East IPDP actually defined the activities to be covered, and felt that very little alteration was allowed to reflect local village needs.
79. **In its review, the Panel found that, each year, entire sections of the annual IPDP for Parej East are repeated verbatim, including the one indicating a community's "felt needs." Each year there appears to be a "one size fit all" plan for each of the 11 communities, regardless of specific needs.**
80. **In the Panel's view, OD 4.20 does not contemplate "indicative" IPDPs either as a substitute for, or as a near-rigid template for, location-specific IPDPs. In Parej East, an indicative IPDP was the basis for the Annual Implementation Plans, which turned out to be inflexible and largely unresponsive exercises. In light of this, the Panel finds that Management was not in compliance with OD 4.20 in the preparation of the original IPDP for Parej East.**

Local Participation

81. OD 4.20 sets out the prerequisites for successful indigenous peoples plans. The first and fundamental one is community participation.
82. **An early 1997 Bank supervision mission acknowledged that there had been virtually no meaningful participation of indigenous people in the preparation of the IPDPs. Unlike the IPDPs for some other mines, the original IPDP for Parej East does not describe any consultation or participation. During its field visit, the Panel was able to confirm a lack of consultation in the preparation of the IPDP. In light of this, the Panel finds that, Management was not in compliance with paragraphs 14(a) and 18 of OD 4.20.**
83. OD 4.20 requires that the contents of an IPDP plan must include a "*Strategy for Local Participation.*" **The community development strategy for Parej East is described in the exact same terms for all three mines in the two different States. Although the strategy has evolved, it is not location specific, nor is it sensitive to the composition, structure and needs of the community. In light of**

this, the Panel finds that Management was not in compliance with paragraph 15(d) of OD 4.20.

84. **The Panel wishes to recognize, however, that recent efforts by Management have resulted in some progress in addressing an enormous challenge in Parej East. Not only does this challenge presume a massive shift in the institutional culture of the implementing agents, who have other overriding priorities, it also requires processes of participation and involvement that are new and strange to those who must relate to the project affected peoples and elements of civil society who represent them.**

Dominance of Infrastructure Activities

85. **During its investigation, the Panel found that many of the IPDP activities in Parej East are disconnected, have little depth, are just marginal and, on the whole, do not reflect a real “felt” need. The Panel is concerned that there has been no concentration on long-term projects such as literacy and numeracy classes, maternal and child health, and self-help groups.**
86. **Although very late, it is encouraging to note that the 2002 IPDP implementation plans consist exclusively of self-help group capacity building and income generation. The Panel would urge that Management take steps to ensure that this does in fact materialize. It also urges Management to ensure that the planned post-project audit determine whether Coal India Ltd. and CCL take steps to continue to improve relations with local civil society groups like CASS and to maintain and strengthen a participatory, bottom-up approach to preventing and ameliorating the environmental and social impacts of their mines on affected peoples, especially the most vulnerable, including the tribals.**

Environmental Compliance

Land Reclamation and the Parej East RAP

87. **The Requesters’ main environmental concern is the preservation of topsoil and the restoration of the surface for agricultural use. The Panel was not shown nor did it observe any topsoil conservation during its visit to the Parej East Open Pit. Although requested at the site, no documentation or information on the five year CSESMP mine reclamation program could be provided to the Panel team. The Panel found little evidence that the mine level staff had training and knowledge of soils and reclamation activities at the Parej East site. Mine rehabilitation and closure appears to be handled as a separate matter to mine planning and operation and staff were unable to provide the Panel with evidence that the eventual configuration and rehabilitation of mined areas were being planned.**

88. **Despite persistent efforts by NGO's and the ESRP, the reclamation of mined land to a situation that would allow tribals to reuse land taken for mining, has not happened, as noted by the ESRP. Management must have been aware of the lack of action on reclamation at least since the 1997 report of the ESRP, findings that were repeated in their 2000 and 2001 reports. And it must also have been aware of CCL's position that it had no intention of reclaiming mined areas for post-mining use. At the same time, this does not constitute a formal violation of Annex C of OD 4.01 as far as land reclamation in Parej East is concerned.**
89. **As reclamation was included in the Coal India Ltd. Environmental Policy for new mines, the Panel fully agrees with and supports the ESRP view that *"Improving reclamation of mined land in the future ... is an issue ... fundamental to CIL's future environmental and social performance."***
90. **The Panel also notes and supports the recommendations made by the international consultants (IMC) in the Report commissioned by Coal India Ltd. entitled *Strengthening Social and Environmental Management Capacity*. This study formed part of the CSESMP and the Panel thus deems its recommendations to be of particular relevance. The first recommendation is that each subsidiary of Coal India Ltd. be required to prepare and implement an Environmental Management Strategy. The second advises that Coal India Ltd. improves planning systems for new mines, with particular reference to land use issues and reinstatement of mined areas to agricultural use. In the Panel's view, the implementation of the IMC recommendations is vital. In addition, because present legal conditions prevent the transfer of land acquired under the CBA Act, the IMC recommends that Coal India Ltd. should lobby the Government to amend existing legislation to allow for the eventual transfer of reclaimed land.**

Water Quality Management at Parej East

91. The Requesters have a number of complaints about water quality monitoring commitments. Management explains that monthly environmental monitoring reports are submitted by the Central Mine Planning and Design Institute (CMPDI) on air quality, water quality, and noise level. The monitoring results are further reviewed on a quarterly basis by the supervision consultant, DCL, and by the Bank during each supervision mission.
92. The Panel was shown that systems have been implemented to prevent the release of untreated mine water and effluent from the maintenance yard; that systems have been implemented to recycle and reuse mine water and cleaned effluent water from the maintenance yard; and standard analyses of December 2000 and March 2001 which showed that all water quality parameters, except for manganese levels, were within permissible limits. No coliforms were reported from any samples. The Panel notes that the Central Mine Planning and Design Institute (CMPDI), in whose

laboratories these analyses are made and from where the monthly environmental monitoring reports emanate, is, like CCL, a subsidiary of Coal India Limited.

93. The Requesters complain that the Company wants to build a bore well for the employee's colony in Lupuntandi, which will affect the water level of the tribal village. The Panel noted that, although sunk, the Lupuntandi tube well which is in close proximity to the recently dug Prem Nagar resettlement site well, has fortunately not been fitted with a pump and is not in operation.
94. The Requesters complain that sewage from the CCL employee's colony is discharged into the fields of Lupuntandi. Parej East OCP staff showed the Panel a modern and efficiently operating sewage treatment facility in the mine employees colony. On the other hand, the Prem Nagar resettlers showed the Panel a malfunctioning sewage pump station close to their site. Here raw sewage was overflowing and being prevented from contaminating agricultural land by a hand-constructed earth berm erected by the villagers. **The Panel believes that careful monitoring of the domestic sewerage treatment facility serving the CCL employees' mine colony is required to ensure that malfunctioning equipment does not lead to raw sewage leaking into the three rain-fed agricultural plots – cultivated by tribals under claimed customary rights –and causing a health hazard.**

Disclosure of Information

Disclosure of EIA, RAPs and IPDPs

95. **The Panel found no evidence that the Sectoral Environmental Impact Assessment, (SEIA) which contained the Parej East five year Environmental Action Plan (EAP), was made “available at some public place” in Parej East “accessible to affected groups and local NGOs for their review and comment.”**
96. **Based on its review of the documentation and interviews, the Panel notes that while Management ensured that the SEIA and the Parej East EAP and RAP were placed in the Bank's Public Information Centers (PIC) in Washington and New Delhi before appraisal, it failed to ensure that the reports were available in Parej East at a public place accessible to affected groups and local NGOs for their review and comment, not even a summary of their conclusions “in a form and language meaningful to the groups being consulted,” as required by OD 4.01/BP 17.50. In light of this, the Panel finds that Management was not in compliance with paragraph 21 of OD 4.01 and paragraph 12 of BP 17.50 in respect of disclosure.**

Parej East Public Information Center

97. **In 2001, it is obviously not possible to verify what precise documents were or were not available in the Parej East Center in 1996/97. In the Panel's view,**

however, the location of the Center in the office of the R&R Officer, in the gated CCL mine Headquarters' compound, does nothing to facilitate information being provided *"...in a timely manner and in a form that is meaningful for, and accessible to, the groups being consulted."* On the contrary, for poor, vulnerable and now dependent people, it is clearly intimidating to approach an office in that location, let alone walk in and freely request information, register complaints and engage in dialogue. When a representative of an NGO was present, the Panel witnessed an atmosphere, tone and mood that was not at all conducive to any kind of open exchange of information. Moreover, the information being provided in 2001 was largely technical and inaccessible to project affected people and without summaries *"...of its conclusions in a form and language meaningful to the groups being consulted."* Management could and should have been aware of this. In light of this, the Panel finds Management not in compliance with paragraph 21 of OD 4.01 and paragraph 12 of BP 17.50.

Consultations

98. The Requesters, both in their Request for Inspection, in prior communications to the Bank, and in subsequent communications to the Panel, allege lack of consultation in both the preparation and implementation phases of the CSESMP. In a sense, this is their bottom-line complaint. Management considers that consultation has been carried out in all respects, both at the preparation and implementation stage.

Environmental Assessment and Environmental Action Plan

99. The Panel finds no evidence of, and no documentation of, meaningful consultations on the Sectoral Environmental Impact Assessment and the Environmental Action Plan with the PAPs or local NGOs in Parej East, as required under OD 4.01. In light of this, the Panel finds that Management was not in compliance with paragraph 20 of OD 4.01 concerning consultations in Parej East on preparation of the Sectoral Environmental Impact Assessment and the Parej East Environmental Action Plan.

Preparation of Resettlement Action Plan

100. Based on a review of the records and interviews in the field, the Panel found no evidence to indicate that, apart from being interviewed for the Baseline Survey, the PAPs were consulted in the preparation of the Parej East RAP itself.
101. The Panel recognizes that Management ensured that the PAPs in Parej East were interviewed during the process of the Baseline Survey preparation and, to the extent that this provided inputs for the RAP, finds that Management was in compliance with paragraph 8 of OD 4.30.

102. **But, beyond these interviews, there is nothing to indicate that the PAPs in Parej East were “systematically informed and consulted during preparation of the resettlement plan about their options and rights.” In light of this, the Panel finds that Management was not in compliance with paragraph 8 of OD 4.30.**
103. **The evidence is clear that the host community for the Pindra resettlement site was not consulted during project preparation and, in light of this, the Panel finds that Management was not in compliance with paragraph 9 of OD 4.30.**

Implementation of Resettlement Action Plan

104. **The Panel notes that, after the RAP was prepared, consultation with PAPs and PAP participation in the resettlement process, was to be undertaken entirely through the implementing NGO, but also observes that in Parej East the implementing NGO, Xavier Institute (XISS), set up an office in Parej East only in July 1997. During the three years that elapsed since the RAP had been prepared there is scant evidence of consultations on planning for displacement, except occasionally at the insistence of CASS. The Panel finds, however, that once XISS began work, there was systematic consultation and involvement of the PAPs, on behalf of CCL, and therefore finds Management in compliance with paragraph 8 of OD 4.30.**

Consultation with Parej East NGOs

105. **The Panel notes Management’s view that consultation with local NGOs was to be undertaken exclusively with the implementing NGOs, but also observes that in Parej East the implementing NGO, XISS (employed only in March 1997) was located in Ranchi, and could not be considered a local NGO until it set up an office in Parej East only in July 1997. It is evident therefore that, prior to mid 1997, any consultation the borrower may have had with XISS did not constitute consultation with a local Parej East NGO. It is also worth noting that since XISS was contracted by CCL it was accountable to the subsidiary that employed it. In the Panel’s view, it is, at best, not clear how this arrangement could serve to discharge Management’s obligation to ensure consultation with local NGOs acting on behalf of the PAPs, rather than on behalf of CCL. At worst, it places the implementing NGO in a serious conflict of interest, the results of which the Panel itself had the opportunity to witness.**
106. **The Panel notes, however, that Bank staff did meet with CASS in the field at least once in 1996 and twice in 1997. Beginning in early 1998 and through to February 2000, the supervision team did, after consultation with Coal India Ltd., systematically respond to CASS letters, and met with the NGO several times in the field to discuss issues. However, this ended in March 2000 and since then, the Panel understands there has been no communication between the Bank and CASS.**

107. **The Panel therefore finds that, before 1998 and after 2000, Management did not ensure that the views of “local NGOs” in Parej East were taken “fully into account in the project design and implementation” as suggested by paragraph 19 of OD 4.01, in particular with regard to implementation of the RAP. In this respect, Management was not in compliance with paragraph 19 of OD 4.01.**

Supervision

108. The Requesters allege that the Bank has failed to adequately supervise the CSESMP project as guaranteed when it undertook the project. Management maintains that it conducted an intense supervision effort.

The Supervision Consultant

109. The SAR noted that the Bank’s supervision missions would not be able to visit all the subprojects even once a year. In light of this, a local consultancy company was engaged to supervise all the project mines at least once every quarter. The Bank found the supervision consultant’s environmental reporting adequate, but, after the first two reports, the February 1998 supervision team was not satisfied with his reporting on social mitigation. This was monitored for the next year until the mid-term review of March 1999 when the supervision team still considered the social reporting inadequate. Supervision of the environmental aspects was done almost exclusively by one Bank expert who told the Panel that, given the huge scale of the CSESMP, he relied completely on the supervision consultant’s reports.
110. **In the Panel’s view, it is most unfortunate that Management did not act on the unsatisfactory nature of the supervision consultant’s reports on the social aspects of the Project before February 1999. By that time, over three years had passed since the local NGOs in Parej East had begun to submit their complaints about lack of consultation. As the Panel reported earlier, it found no evidence of consultation on the preparation of the SEIA and the RAP, which deals with matters that have a fundamental impact on the future well being of those being forced to resettle. The Panel would also note that the ESRP reports should have alerted Management to a number of problems as early as April 1997, two years before it concluded that its supervision consultant’s reports were unsatisfactory. In light of this, the Panel finds that, prior to February 1999, Management was not in compliance with OD 13.05 on Bank Supervision.**

Bank Supervision Missions

111. **Up to June 30, 2001, Management undertook 21 supervision missions during the implementation period, with each of the 25 mines being visited once a year. In the case of Parej East, it undertook 18 missions, an average of six per year. Thus, supervision of the CSESMP in Parej East has been regular and represents an intense supervision effort in terms of resources allocated and numbers of visits. In part, because of the inadequacy of the supervision**

consultant's reports, the supervision team's knowledge of ground realities was limited, and for that reason, their efforts to resolve problems had virtually no impact on the ground.

- 112. Judging from the Back to Office Memoranda, Aide-Memoires, other mission reports and documents since 1998, Management has not hesitated to be frank about problems and difficulties encountered. It has also proposed solutions and worked with the borrower to find ways of achieving them, and to the extent that Management can, to follow-up. In the Panel's view, based on this evidence, the supervision team generally made a significant effort to overcome some of the problems stemming from the flawed RAP and IPDP for Parej East.**
- 113. Since its establishment, the current supervision team has generally made a significant effort to overcome the major problems outstanding and, short of suspending or canceling the Credit, doing its best to translate its efforts into outcomes on the ground. In light of this, the Panel finds that since 1998 Management has been in compliance with OD 13.05.**

Part One: Introduction

Chapter 1

1. The Coal Sector Environmental and Social Mitigation Project

1. The Coal Sector Environmental Social Mitigation Plan (CSESMP) was initially conceived as a component of the Coal Sector Rehabilitation Project (CSRP). Starting in 1990, preparation began with the aim of supporting India's reform and expansion of the coal sector. Mitigation of the resulting environmental and social impacts was initially a part this Project and was included in the Initial Executive Project Summary of March 1992. In 1993, the Government of India (GOI) formally requested financial assistance from the International Bank for Reconstruction and Development (IBRD) for the investment components of the Project, and from the International Development Association (IDA) for the environmental and social mitigation measures required to bring the then selected mines in line with Indian laws and regulations as well as the Bank's operational policies and procedures. Subsequently, in November 1995, the project was split into an environmental and social component, the CSESMP, and an investment component, the CSRP. The CSESMP was designed to assist Coal India Ltd.'s efforts to mitigate the environmental and social impacts of mining expansion to be undertaken in 25 mines under the proposed CSRP.² Later, after being tested and revised as necessary during the five-year time slice financed by the Bank, Coal India Ltd. anticipated applying its new environmental and social mitigation policies in more of its 495 mines.
2. In May 1996, Management informed some international NGOs that the CSESMP and the CSRP would be linked by cross conditionality. This meant that disbursements under the CSRP for any particular mine would be contingent on timely and effective implementation of the mine specific RAPs, EAPs, and IPDPs. Thus, for example, if implementation were to be unsatisfactory at Parej East, then the Bank would suspend or cancel further disbursements for that mine under the CSRP.³
3. In the same month, May 1996, the International Development Association (IDA) granted a Credit of US\$63 million to finance the CSESMP. On September 9, 1997, the Executive Directors approved an IBRD Loan for the equivalent of US\$530 million and an IDA Credit to India for about US\$2 million equivalent to help finance the CSRP. Because of implementation difficulties, it was cancelled in July 2000. Coal India Ltd., however, decided to continue with mitigation programs started under the CSESMP. On April 20, 2001, it requested, and the Bank agreed, to

² See Staff Appraisal Report, India Coal Sector Environmental and Social Mitigation Project, Report No. 15405 (hereinafter 'CSESMP SAR'), April 24, 1996, para. 3.1.

³ Office Memo, May 13, 1996, Secretary to Board of Executive Directors, p. 13, Management Response to The Berne Declaration, Mainstreaming Sustainability? The World Bank and the Rehabilitation of the Indian Coal Sector, April 26, 1996 (hereinafter 'Office Memo, May 13, 1996').

extend the CSESMP closing date for one year, June 30, 2001 to June 30, 2002. At the time the extension was granted, about US\$24 million was undisbursed.⁴

4. This Report concerns only the Parej East mine, owned and operated by Central Coal India Ltd. (CCL), a subsidiary of Coal India Ltd. (CIL). This opencast mine is one of the 25 coalmines selected for CSESMP financing. The mine is located in the midst of a number of mines in the West Bokaro Coalfield of Hazaribagh District, near Ranchi, in the state of Jharkand (formerly part of the state of Bihar until August 2000). Mining began at Parej East in 1993. Two villages are affected by this mine expansion – Parej and Durukasmar.⁵

Box 1. India Coal Sector Background

According to the CSESMP Staff Appraisal Report (SAR) coal currently meets two-thirds of India's energy needs, and India's coal resources are large enough to meet projected demands for the next 250 years. Indigenous coal is likely to remain the least costly option for the bulk of India's energy needs for the foreseeable future. However, coal production, whether opencast or underground, requires access to land.

According to the SAR, it has become increasingly difficult for Coal India Ltd. to acquire land for the expansion of its operations, and in recent years the social and environmental costs of developing coal reserves have increased steeply, particularly in densely populated areas. Several studies have shown that the expansion of coal mining into remote areas has a profound impact on local people and communities, who originally had only limited contact with the modern world, and whose livelihood was based mainly on subsistence agriculture, hunting, and foraging for forest products.

⁴ The World Bank extended the Coal Sector Rehabilitation Project (CSR) Loan of about US\$530 million and Credit of about US\$2 million 14 months later on September 9, 1997. The Loan and Credit became effective nine months later on June 17, 1998.

⁵ See Map 1 at the end of this Report.

Chapter 2

2. Inspection Panel Asked to conduct Investigation

5. The Panel's investigation was initiated by a Request for Inspection submitted to the Panel on June 21, 2001. The Request was submitted by Ms. Bina Stanis of Chotanagpur Adivasi Sewa Samiti (CASS), a local NGO representing residents of the Parej East coal mining project area (together referred to as 'the Requesters').

2.1. The Request for Inspection

6. The Requesters claimed that they have suffered harm as a result of failures and omissions of IDA in the design and implementation of the CSESMP in Parej East Project area. Moreover, this harm is alleged to be a result of the Bank violating various provisions of the following Bank policies and procedures: Involuntary Resettlement (OD 4.30), Indigenous Peoples (OD 4.20), Environmental Assessment (OD 4.01), Project Supervision (OD 13.05), Disclosure of Information (BP 17.50), and Management of Cultural Property (OPN 11.03).
7. Citing the objectives of the CSESMP, the Request points out the PAPs understood that the implementation of the Project would mean "*that the quality of their lives would improve, that they would share in the benefits of the mining project, that their displacement and relocation would be undertaken as a development programme, that their former living standards, income earning capacity and production levels would be restore [d], if not improved.*"⁶ Instead, they assert that "*now, as the end of the CSESMP project is imminent, it has failed in its professional aims and failed in the guarantees that were given to the PAPs, guarantees that were used as levers to win consent to give their land and livelihood for the project.*"⁷
8. The Requesters claim that their rights under the World Bank policies cited above were not respected. They also claim that their rights to participation and consultation were effectively denied to them, and that their attempts to raise the aforementioned concerns were not successful.
9. The Requesters allege that failure to provide income restoration has resulted in significant harm since they are now without compensatory land, employment or self-employment, and they now subsist as casual laborers at mere survival levels with a total loss of human dignity. They assert that they have "*a right to fair and adequate compensation for the loss of their lands and villages,*"⁸ and they focus their complaint on the "*key issue*" of failure to restore their income levels. One of

⁶ Request for Inspection: India Coal Sector Environmental and Social Mitigation Project, and Coal Sector Rehabilitation Project (hereinafter 'Request for Inspection'), June 14, 2001, para. 1.

⁷ Id., para. 8.

⁸ Id., para. 3.

the reasons they assert that income restoration has not taken place is that mine expansion has greatly depleted their common property resources such as water, fruit trees, and forest sources for fodder, fuel, and building material.

10. Moreover, they maintain that “*monetary compensation for private income producing assets (land) has not been adequate to secure replacement by other income producing assets (replacement land, other capital assets), and that ultimately [the cash compensation they receive] is spent on consumer items.*”⁹ They assert that although they were former landowners, they now live in colonies without legal possession of any land, where their former skills are no longer applicable, their productive sources are dismantled, and their supporting networks and kin groups are dispersed.
11. The Requesters further claim that Coal India Ltd.’s resettlement and rehabilitation policy has kept employment by the company to a minimum, and they assert that the “*much flaunted self-employment projects which the Bank guaranteed would fill in for the ... shortages, are grossly failing to replace livelihood, if they have at all materialized.*”¹⁰ They do concede that training has been given, but they say it is “*often short and ineffective, and not linked to explicit employment opportunities.*”¹¹
12. The Requesters also allege that they now suffer increased illness as a result of the pollution of wells and other water sources in the resettlement colonies. They claim that there are no medical services to handle increased illnesses, even though a dispensary was built, and they now lack other basic services, such as education.
13. The Requesters nevertheless called on Management and the Board of Executive Directors to extend the CSESMP, and requested that the remaining money be targeted toward the restoration of livelihoods of the PAPs as well as environmental remediation.¹²
14. The above summarizes the main body of the Request for Inspection. There are 55 attachments to the Request, which show the Requesters’ correspondence with the Bank, starting from early 1996. These attachments contain details of the Requesters’ complaints, which will be referred to often in this Report.

2.2. Management Response

15. The Panel received Management’s Response to the allegations in the Request on July 20, 2001. Management maintained that the Bank had complied, and intended to continue complying, with the relevant policies and procedures related to the design and implementation of the CSESMP.

⁹ Id., para. 4(b)(ii).

¹⁰ Ibid.

¹¹ Ibid.

¹² At the time the Request for Inspection was filed, in June 2001, the credit was due to be closed at the end of the month with about US\$24 million unspent.

16. Management acknowledged that throughout the Project, resettlement in Parej East encountered a number of problems, which, in their view, resulted from an initial lack of flexibility and understanding on the part of mine management, and from resistance by the PAPs to resettlement. Nonetheless, they claimed that while the problems have not been entirely overcome, there has been progress.
17. Management explains that the borrower began to implement the CSESMP later than anticipated, i.e. towards the end of 1997, about 18 months after the Credit became effective. Management admits that during 1998 and 1999 progress was both slow and uneven across the 25 mines under the Project, and that it was only in the first half of 2000 that significant progress began on implementation throughout all the mines. However, even then, economic rehabilitation remained unsatisfactory. As a result of this, as well as for other reasons related solely to the implementation of the CSR, Management states that the investment loan was cancelled at the request of the Borrower.
18. Management noted that since the purpose of the CSESMP was to mitigate impacts of the CSR and to strengthen Coal India Ltd.'s capacity to manage such mitigation issues, the Bank's withdrawal from the CSESMP would not have provided the context for continued dialogue. Management further pointed out that the Bank's withdrawal might have adversely affected "*the considerable task that still remained regarding improvement of mitigation efforts.*"¹³ Therefore, Management decided to "*continue to actively work with CIL to help develop practical solutions to improve environmental and social mitigation at the mine and corporate level, and to achieve compliance with Bank policies.*"¹⁴ Management believed that after cancellation of the CSR there had been noticeable progress on implementation of the CSESMP.
19. Management further maintains that it has devoted full attention to the intense supervision effort required by the scale and complexity of the Project's physical, mitigation, and institutional activities. Management also asserts that consultations have been adequate, but admits that Coal India Ltd. did not consult the PAPs before it introduced changes on eligibility and entitlements in its Resettlement and Rehabilitation (R&R) policy in the year 2000.
20. Referring to the Requesters' right to adequate and fair compensation for loss of villages and land, Management explains that resettlement sites constitute the compensation for loss of villages. Management acknowledges that resettlement in Parej East had encountered a number of problems "*deriving from initial lack of flexibility and understanding on the part of mine management, and from resistance to relocation by the PAPs.*"¹⁵ Management also asserts that in addition to the general

¹³ Management Response to the Request for Inspection, India Coal Sector Environmental and Social Mitigation Project, and Coal Sector Rehabilitation Project (hereinafter 'Management Response 2001'), July 19, 2001, para. 21.

¹⁴ Ibid.

¹⁵ Id., para. 52.

resistance to relocation that exists in every involuntary relocation situation, difficulties arose in Parej East because of the PAPs' changing demands that undermined previous agreements between mine management and the PAPs.

21. In response to the Requesters' claim that they are without legal titles or long term leases for house plots in resettlement sites, Management agrees and says that the supervision team had raised the issue during each of its missions, and that they would continue to seek a resolution of it. Management asserts that it is satisfied that compensation paid to entitled PAPs (EPAPs) for agriculture land was equivalent to replacement costs. To this they add that CCL cannot delay the release of compensation payments to avoid PAPs spending the cash they receive on consumer items rather than on land or houses.
22. According to Management, common property resources are available for those choosing to shift to the resettlement sites. Management is also satisfied that the compensation provided for houses enabled the PAPs to construct a replacement house at par with their original house as required under the Bank's OD 4.30.
23. Management observes that it is too early to judge whether efforts made will result in full income restoration as intended. It acknowledges that mine jobs are limited to those losing more than two acres. Otherwise compensation consists of training and assistance for self-employment. Management acknowledges that this "*cannot by itself bring about full economic rehabilitation*"¹⁶ or result in an income comparable to working in the mines. Availability of replacement land through market purchase is limited and Management is still discussing the possibility of introducing land-based income generation with CCL.
24. According to the Management, the Environmental Assessment did not identify issues related to the Bank's policy on cultural property (OPN 11.03) and, therefore, the policy did not apply. However, Management claims that when issues have arisen, "*they have been dealt with in a manner consistent with*"¹⁷ the policy.
25. Management also asserts that the Bank policy on disclosure of information (BP 17.50) has been complied with in Parej East, but agrees that the Borrower did not permit release of the CSESMP mid-term review.
26. In terms of services in the resettlement sites, Management asserts that a drinking water problem has been corrected, but that the school and health clinics are not yet staffed. Management stated that the supervision team would continue to follow up on this issue with CCL.

¹⁶ Id., para. 78.

¹⁷ Id., para. 88.

27. In its Response, Management announced that the CSESMP closing date had been extended for one year until June 30, 2002.¹⁸ Management claims in this connection that some “*key activities*” related to the extension of the closing date “*will also address the issues raised in the Request for Inspection.*”¹⁹

2.3. The Panel Report and Recommendation

28. For purposes of determining the eligibility of the Request and the Requesters, the Panel reviewed the evidence submitted by the Requesters and Management. Also during a field visit between August 8 and 14, 2001, Panel Members, Jim MacNeill and Edward Ayensu,²⁰ met with Government and World Bank officials in New Delhi. They then visited the Parej East Project area where they met with the PAPs and officials of CASS who represent them. They also met with officers of the CCL. Before and after the visit, the Panel consulted with the Bank Executive Director representing India and his staff.
29. On August 20, 2001, the Panel submitted its Report on the eligibility of the Requesters and the Request and its recommendation on the Request for Inspection. It concluded that the Requesters were eligible and that the Request met all of the technical eligibility criteria contained in paragraph 9 of the 1999 Clarifications.²¹ It also concluded that the Request and Management’s Response contained conflicting assertions and interpretations about the issues, the underlying assumptions, the facts, compliance with Bank policies and procedures, and harm and potential harm. The Panel therefore recommended an investigation into the matters alleged in the Request.

2.4. The Board’s Decision

30. On September 7, 2001, the Executive Directors recorded on a non-objection basis, their approval of the Panel’s recommendation for an investigation.

2.5. Supplementary Submission and Management Comments

31. On January 11, 2002, the Panel sent Management two documents received from the Requesters, which the Requesters had intended to annex to the Request. Unfortunately, the Panel received the documents too late to be considered during the eligibility phase. They are attached as Annex 2 to this Report.

¹⁸ The need for an extension was apparently envisaged as early as February 1999. Coal India Ltd. requested it on March 26, 2001, and the Government formally requested an extension in April.

¹⁹ Management Response 2001, *supra* note 13, para. 96.

²⁰ Assisted by Ms. Antonia M. Macedo, Assistant Executive Secretary to the Inspection Panel.

²¹ The 1999 Clarifications to the Resolution that established the Panel are contained in the ‘Conclusions of the Board’s Second Review of the Inspection Panel’ dated April 20, 1999.

32. The first of these documents is a note elaborating on Paragraph 4(a) of the Request, and lists the provisions of ODS 4.30 and 4.20 that the Requesters' believed have not been observed. The second document is an analysis conducted by CASS, in table form, of what has happened to the PAPs who have already been displaced from the four hamlets in Parej East.²²
33. Management sent its comments on these documents to the Panel on April 4, 2002 in the form of a Second Response. In it, Management states that all issues raised by the Requesters were investigated by the CSESMP team during a mission to Coal India Ltd. headquarters and the Parej East mine from February 4 to 14, 2002. Management asserts that its Second Response provides additional evidence that it is in compliance with all relevant policies and procedures. Management's Second Response is attached as Annex 3 to this Report. After examining this second Response (Annex to this report), the Panel considered it necessary to ask Management for clarification of two major issues. These clarifications were received on October 2, 2002.

2.6. The Investigation Process

34. The investigation phase was conducted by Panel member Ms. Maartje van Putten (Lead Inspector) and then Panel Member Jim MacNeill.²³ It consisted of two parts. The first part took place at the World Bank Headquarters in Washington, DC while the second took the form of in-country, fact-finding visits. To facilitate its work, the Panel enlisted the services of three consultants who are experts in their respective fields: Professor Sachchidananda, anthropologist and social scientist, Professor Richard Fuggle, environmental specialist, and Professor Elliot M. Fratkin, anthropologist and social scientist. The Panel also hired Ms. Tatiana Tassoni to assist the Secretariat on this investigation. Mr. Serge Selwan assisted in finalizing the Report and a translator, C. K. Singh, assisted the Panel in the field visits.
35. The Panel studied all relevant documents available to it, and analyzed the facts presented to it during the field visits. The Panel also interviewed World Bank staff both in Washington, DC and the New Delhi Office.
36. The Panel Team made two visits to India, and in particular to Parej East. During these visits, the Panel met with officials of the Governments of India and Jharkand, Coal India Ltd., and Central Coalfields Ltd. In Ranchi and Parej East, the Panel Team also met with the representatives of the Requesters (CASS), project affected people, members of the CSESMP facilitating NGO, Xavier Institute (XISS), and others in the area knowledgeable about the Project. The Team met with project-affected people in the resettlement sites of Prem Nagar and Pindra, the temporary barracks, and villages in Durukasmar from which people have not yet been

²² Both documents were received as a supplements to the June 14, 2001 Request for Inspection, and are attached as Annex 2 to this Report (hereinafter 'Supplement to Request').

²³ Mr. Jim MacNeill served as a Panel Member from August 1997 through July 2002, and thereafter continued to work on this report until its completion.

displaced. Five of the eleven Parej East hamlets included in the Indigenous Peoples Development Plan were visited.

37. The investigation of the preparation and design aspects of the CSESMP was based entirely on an examination of the relevant documents available to the Panel, since the staff involved have largely left the Bank and are unavailable.

Part Two: Social Compliance

Chapter 3

3. Involuntary Resettlement

38. The Project envisaged the involuntary resettlement of a large number of families and individuals. As shown in the following table, the Project as a whole contemplated the resettlement of over 2,500 families, 227 of whom were in Parej East. More than 10,000 PAPs were entitled to income restoration, 628 of them in Parej East. Over 6,500 were targeted for self-employment assistance, of whom some 202 were in Parej East.

Potentially Affected Families and Individuals	Total For CSESMP	Total In Parej East
Families to be resettled (by end 2002)	2,584	227
PAPs entitled to income restoration	10,003	628
PAPs targeted for self-employment assistance	6,532	202

39. The potential impacts were also significant. In 1994, a year before the CSESMP began operations, a Xavier Institute (XISS)²⁴ study summed up the general changes brought about by the existing coal mines in the vicinity of Parej East as follows: *“on the one hand Coal mining has brought many benefits to all those people who are directly employed by CCL (or TISCO) and those who are otherwise involved in the ‘Coal Business’ as it is called (Contractors and transport operators). Unfortunately the majority of these persons have come from outside the area. For the majority of the local people the Coal Mines have brought about a total disruption of their life. The economic base of their livelihood (land and forest) have been taken away or destroyed. They feel a deep sense of loss. Those among them who are educated do realize that the process of coal mining operation cannot be stopped, but they feel deeply disturbed at the speed at which [mechanized] mining operation are destroying the total environment, both physical and social. The total scenario is changing rapidly and the local population is not at all prepared to face such changes.”*²⁵
40. The same report warns that illiteracy would be the major stumbling block to adaptation to the changes imposed by the mine: *“[t]he fact that literacy rate is very low is an indication that the local population is not at all ready for such modern disruption in their lives. Unless remedial steps are taken to increase the level of literacy and awareness among the population, mining operations will have a*

²⁴ A local NGO who had conducted the Baseline Survey for the RAP and who later became the implementing NGO.

²⁵ Study on Impact of Mining People: A Case Study of the West Bokara Coalfields, Xavier Institute of Social Services, December 23, 1994 (hereinafter ‘XISS Report’), p.12.

*disastrous effect on the local population. This is the challenge to which the coal industry should respond.”*²⁶

41. The first objective of the Bank’s resettlement policy, OD 4.30, is “*to ensure that the population displaced by a project receives benefits from it.*”²⁷ The OD goes on immediately to add that: “*[i]nvoluntary resettlement is an integral part of project design and should be dealt with from the earliest stages of project preparation.*”²⁸ It then spells out a number of policy considerations to be factored into project design. The first two of these are that: “*(a) Involuntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs...[and] (b) Where displacement is unavoidable, resettlement plans should be developed. All Involuntary resettlement should be conceived and executed as development programs, with resettlers provided sufficient investment resources and opportunities to share in project benefits ... Particular attention should be paid to the needs of the poorest groups to be resettled.*”²⁹
42. Most of the problems associated with involuntary resettlement that the Requesters raised were evident in other Bank-financed projects in India. Management mentioned similar problems with three previous projects the Bank had financed in the Indian coal sector in the Project Information Document (PID) on the CSESMP. As of November 1995, it stated, rehabilitation either had not been completed or, in the case of one project, was “*plagued by land acquisition and unresolved social issues.*” The lesson Management drew from these operations was that “*Land acquisition is difficult unless project affected people are consulted from the outset and offered acceptable alternatives that ensure that they at least regain their livelihood.*”³⁰
43. In the Request, CASS states that “*[t]he basic contention of this application is that from the very beginning there have been flaws in the design of the CSESMP project. There were flaws that the Bank with its multiple competencies and resources could have seen and corrected ... both at the planning stage, and at the monitoring stage.*”³¹ One alleged general flaw is related to the lack of the mention of the existing impacts of other mining projects in the Parej East.³² Before the CSESMP

²⁶ Id, p.12. Appendix p. 13 of the Report, notes that of the total number of 626 Project Affected People (PAPs) in Parej village only 187 were literate, leaving 264 illiterate, the rest being children below school age. For Durukasmar village the total number of PAPs was 546, of whom 204 were literate, 212 illiterate and the rest children below school age.

²⁷ OD 4.30, Policy Objectives, para. 3.

²⁸ Ibid.

²⁹ Ibid. Specifically, subparagraph (b) goes on to state that “*[d]isplaced persons should be (i) compensated for their losses at full replacement cost prior to the actual move; (ii) assisted with the move and supported during the transition period in the resettlement site; and (iii) assisted in their efforts to improve their former living standards, income earning capacity, and production levels, or at least to restore them.*”

³⁰ Project Information Document (PID), November 30, 1995, para. 14.

³¹ Supplement to Request, *supra* note 22, p. 1, in Annex 2 of this Report.

³² In Supplement to Request, *supra* note 22, para. 13(b), in Annex 2 of this Report, the Requesters state that the villages in East Parej are multiply affected by other surrounding mines, and that whereas CCL claims it is only taking part of the village lands, the rest of the village lands is being taken by other mines. They

was approved CASS had called for a regional area-wide impact assessment to aid in present and future planning but received no response.³³

44. In its Response, Management explains, basically, that mitigation of land acquisition impacts caused by non-Bank funded investments in non-CSESMP mines are not within the scope of the CSESMP. However, they outline the extent to which the Parej East RAP and IPDP cater for the consolidated losses to villages within one kilometer around the mine.³⁴

3.1. Coal India Ltd. corporate R&R policy

45. Paragraph 26 of OD 4.30 allows for general resettlement plans or policies for sector investment loans on the condition that the Bank approves the RAPs individually for each subproject. As noted earlier, in April 1994, Coal India Ltd. prepared and adopted a new corporate Resettlement and Rehabilitation (R&R) policy.³⁵ Prior to Management accepting the policy, the Bank's Legal Department reviewed it. After expressing his understanding that "*there is pressure to review this quickly,*" the Bank lawyer concerned made several important points that Management decided not to pursue with Coal India Ltd.. Without changes, the lawyer said, Management must review each mine specific RAP to ensure that it met the Bank's policy requirements.³⁶ In addition, feeling that much of the language in the policy was too discretionary, he highlighted several shortcomings. Among them:

- The policy's provision that the PAPs should regain their former standard of living, but only after a "*reasonable transition period.*" He pointed out that this must be "*time-bound.*" Otherwise, it could imply that PAPs would have to give up their standard of living for an unknown period of time, thus ending up worse off than they were before. This, he said, was hardly consistent with paragraph 3 (b) of OD 4.30.
- The absence of a definition of "*adult individuals.*"
- The reliance on evidence that a person was a legitimate PAP for purposes of compensation and rehabilitation should include the ability to get a "*sworn affidavit.*"
- The absence of any description of an appeal mechanism for PAPs grievances.

assert that "*without a regional area wise impact assessment to ascertain the true impact of the mining in the area, it has been impossible to have a correct picture of the affected villages and families and the extent of such effect ...*"

³³ See Request for Inspection, *supra* note 6, Attachment 5 para. 2.2 to 2.9, CASS/JJM to the World Bank: comments on the CSESMP, dated February 25, 1996, where CASS first raised the question of why the EAP and RAP failed to address the multiple impacts of many already existing adjacent mines with a multiple impact assessment (West Bokaro, Parej West, Tapin North, Tapin South, Tapin OC, Basantpur, Kedla South, Laiyo, and Jharkand), and considered a structural flaw. See also *Id.*, Attachment 6, CASS/JJM to the World Bank: Report on the East Parej OCP, dated April 20, 1996.

³⁴ Management's Comments on Additional Issues Raised by CASS, April 4, 2002 (hereinafter 'Management Comments 2002'), para. 55, in Annex 3 of this Report.

³⁵ Project Files, April 1994.

³⁶ Project Files, May 13, 1994.

- The fact that a house site measuring 100m² per family would not provide much space for a large family or, if the previous homestead was larger, would result in a drop in the PAPs' standard of living. He felt that house sites should be "*at least*" 200m².
 - That Coal India Ltd.'s subsidiaries need only "*persuade*" rather than require their contractors to provide jobs to PAPs.
 - That the self-employment package provided no assurance that PAPs would maintain their standard of living.³⁷
46. An area-wide plan for each of the 14 mines with involuntary resettlement was not a requirement of Coal India Ltd. R&R policy. The Panel observes that an area-wide plan for each of the 14 mines with involuntary resettlement was not a requirement of Coal India Ltd. R&R policy. At the same time, however, given the fact that in the future additional mines are expected in the area of Parej East, the preparation of an area-wide plan would have been a prudent course to take and might well have revealed many of the problems that have confronted Management.
47. In May 1994, ASTHR (Asia Technical Human Resources) gave its clearance "*in light of the fact that the document has been through several edits and difficult negotiations with the borrower.*"³⁸ However, it did have a number of reservations.
48. Regional Management had proposed none of the above changes to Coal India Ltd. In May 1994, Management formally told Coal India Ltd. that it accepted the policy as "*in line with the Bank's policies regarding the resettlement and rehabilitation of project-affected people and, as such, is a workable instrument for the preparation of Rehabilitation Action Plans (RAPs) ... However, we will have to review each RAP to be sure it contains the obligatory requirements for a successful RAP*"³⁹ (emphasis added). However, Management added comments indicating what it "*hoped*" Coal India Ltd. would take into account when preparing the RAPs. For example, reflecting the above-noted concern about the "*transition period*," Management reminded Coal India Ltd. that the RAPs would need to contain a time-bound program for reestablishing the livelihood of the PAPs.
49. Thus, the Panel notes that Management accepted Coal India Ltd. R&R policy on the grounds that it "*clearly shows the intent to meet the Bank's*" OD 4.30⁴⁰ (emphasis in original). The Panel also observes that Management decided that it would need to review the RAPs for each of the 14 mines after they were prepared, for actual compliance with OD 4.30.

³⁷ Project Files, May 4, 1994.

³⁸ Project Files, May 5, 1994.

³⁹ Project Files, May 13, 1994.

⁴⁰ Office Memo, May 13, 1996, *supra* note 3, para. 7.

3.2. The Parej East Resettlement Action Plan (RAP)

50. CASS claims that many sections of the Parej East RAP are little more than an outline of policy statements.⁴¹ Management prepared Guidelines for preparation of the 14 RAPs and sent them to Coal India Ltd. in early July 1994. The Guidelines made it clear that different issues should be given priority in different sub-projects, and that the RAPs should be tailored accordingly.⁴²
51. Paragraph 30 of OD 4.30 provides that “ *[t]he appraisal mission should ascertain ...the adequacy of the plan, including the timetable and budget for resettlement and compensation...*”
52. Management cleared the RAP for Parej East in 1994. The Panel has reviewed it and finds that it is not location specific as required by Management in accepting Coal India Ltd. R&R policy. It contains a number of deficiencies, which are discussed in detail in the remainder of this Report. A few examples at this point, however, may be useful. The Panel found, for example, that the RAP contains no description of how house compensation rates would be calculated. It found that PAPs were not asked to give any preference for future employment should a job in the mine not be available. It found that there was no feasibility study of self-employment opportunities in Parej East, including a market survey while RAPs for other mines⁴³ had one. It found that there are no details on the size of, or usable products in, the forest adjacent to the chosen resettlement site to indicate that the forest would actually compensate PAFs for this loss of opportunity from common property resources. And it found that there is no time-bound income restoration strategy.
53. Management required annual updates of the RAP implementation plans for each mine as a cross-conditionality under Schedule 9 of the CSRP Loan Agreement.⁴⁴ Under the CSESMP Project Agreement, Coal India Ltd. was required to appoint NGOs to assist its subsidiaries in implementing the RAPs.⁴⁵ In the case of Parej East, the XISS was appointed in March 1997. It opened its office in Parej East in July 1997 and was given responsibility for preparation of the annual RAP implementation plans.
54. The NGOs appointed for this task had not prepared the original RAPs and were not experienced in this work. The subsidiaries’ own officials designated to work with

⁴¹ See Request for Inspection, *supra* note 6, Attachment 6 para. 5.2, CASS/JJM to World Bank: Report on the East Parej OCP, April 20, 1996.

⁴² Project Files, July 5, 1994.

⁴³ Eastern Coalfields Ltd; South Eastern Coalfields Ltd. and Mahanadi Coalfields Ltd.

⁴⁴ Management Response 2001, *supra* note 13, Annex 1 para 3(d). It requires Coal India Ltd.. to “*submit to the Bank for approval by November 30, of each year, 14 annual mine-specific rehabilitation plans taking into account the time schedule and actions referred to in subparagraph (e) below and the first set of 14 plans for the calendar year 1998 to be submitted by May 31, 1998.*” See also para. 3(e) which requires “[b]y December of the following year: (i) complete information of all activities described in such rehabilitation plans; and (ii) complete actions relating to resettlement to the satisfaction of the Bank.”

⁴⁵ Project Agreement, June 5, 1996, IDA and Coal India Ltd., schedule 2 para. 9.

the NGOs were similarly inexperienced and untrained. To compound the problem further, the Environment and Social Review Panel (ESRP)⁴⁶ considered that Coal India Ltd.'s subsidiaries had instructed their own officers and the contracted NGO to follow the original RAP. This would appear to have been the case in Parej East. Barring this, CCL officers working with XISS might have been able to improve the original RAPs and bring more activities into compliance with OD 4.30.

55. It appears that each year the Bank staff sent the annual RAP update submitted by XISS back for revisions. And each year staff considered there was some improvement, a view apparently shared by the Requesters. Despite this, however, early in 1999, the supervision team concluded there were still significant areas where improvements were required. In the Task Leader's view, most of them concerned income restoration.⁴⁷
56. **The original RAP for Parej East did not reflect the actual situation in Parej East and was not location-specific as required by Management when it approved Coal India Ltd.'s R&R policy. In the Panel's view, Management's failure during appraisal to ensure that the original RAP reflected reality on the ground resulted in many problems that are at the root of the Requesters' complaints.**
57. **In light of this, the Panel finds that Management's appraisal of the Parej East RAP was not in compliance with paragraph 30 of OD 4.30.**

3.3. Level of Compensation for Land

58. A basic principle of OD 4.30 is that displaced persons should be compensated for their losses at full replacement cost prior to the actual move.⁴⁸
59. The Requesters claim that monetary compensation for land has not been adequate to secure replacement land that will produce the same income,⁴⁹ and that "*in fact some of the villagers have already filed applications in the coal tribunal in the Civil Court Ranchi for enhancement of compensation as in many other villages [in the area of Chotanagpur] higher compensation has been provided.*"⁵⁰ The Requesters maintain that, since the very beginning in 1996, land compensation has been provided at the price in effect on the date of notification of land acquisition, rather than the price in effect on the date of payment. As a result, the amount paid is lower than the cost of

⁴⁶ The Environmental and Social Review Panel was appointed according to para. 13 of OD 4.01, which provides that the project implementation should be supervised and guided by an independent panel of experts.

⁴⁷ Project Files, February 4, 1999.

⁴⁸ OD 4.30, Policy Objectives, para. 3(b).

⁴⁹ Request for Inspection, *supra* note 6, para. 4(a)(ii).

⁵⁰ Supplement to Request, *supra* note 22, para. 14, in Annex 2 of this Report.

replacement land.⁵¹ In November 1996, CASS acknowledged that, since mine development had inflated the price of land, authorities were starting to compensate at prices in effect after the date of notification.⁵² Nevertheless, they maintained, it was still only enough to enable the PAPs to cover the cost of replacement land outside the mining area.⁵³

60. In its Response, Management contends that “[a]fter comparing recent market purchase prices with the compensation paid to EPAPs, Management is satisfied that the compensation paid for agricultural land [within the past two years] is equivalent to replacement costs.”⁵⁴
61. Management also agrees that compensation is based on land prices registered in the area at the time of notification of acquisition, but points out that a 30 percent solatium⁵⁵ is added in recognition of the injured feelings for compulsory acquisition, plus a 12 percent cost escalation, and interest.⁵⁶ Furthermore, Management states that PAPs contesting the compensation assessed by CCL and the District Administration can appeal the decision.⁵⁷
62. According to Management, out of the total of 33.89 hectares of privately owned (tenancy) land acquired for mine expansion in Parej East up to March 31, 2002, compensation had been paid for 28.23 ha. For the balance of 5.66 ha, PAPs have exercised their right to have their compensation awards reviewed by the Tribunal. The Tribunal has settled 16 cases (75.58 acres) out of the 43 cases (154.23 acres) referred to it, all with an increase in the awards. The remaining 27 cases (78.66 acres) are still under review with the Tribunal. Management asserts that it has found two cases where land compensation paid from July 1999 to July 2002 was sufficient.
63. The Tribunal’s decision to award increased amounts has been appealed to the High Court by CCL. However, Management considers this evidence that “[r]egardless of

⁵¹ See Request for Inspection, *supra* note 6, Attachment 14 para. (c), CASS to World Bank, Responses to Response, dated November 1996; Attachment 49 para. 1, CASS to Deputy Commissioner Hazaribag, December 17, 1999

⁵² *Id.*, Attachment 14 para. (c), CASS to World Bank, *Responses to Response*, dated November 1996.

⁵³ *Ibid.* International NGOs then took up this issue on at least two occasions. See also Attachment 7, The Berne Declaration, *Mainstreaming Sustainability? The World Bank and the Rehabilitation of the Indian Coal Sector*, April 26, 1996; and Attachment 20 para. 2, The Berne Declaration, *Outstanding Issues*, February 7, 1997.

⁵⁴ Management Response 2001, *supra* note 13, para. 62. Management points out that in Parej East “recent market purchases are reported at between Rs.12 to 15,000 per acre for lower quality, and Rs.40 to 45,000 per acre for better quality land, which corresponds with the average awards made to PAPs.”

⁵⁵ Compensation given for loss.

⁵⁶ Management Response 2001, *supra* note 13, para. 63.

⁵⁷ *Id.*, para. 62. Under Section 4(1) of the Coal Bearing Area (CBA) Act of 1957, as modified in 1976, a notification is issued announcing the intention and purpose of the acquisition. A second notification is issued under Section 7 within two years from the date of the first one. Thereafter Section 14 of the Act provides for an appeal to a Tribunal by PAPs contesting the compensation that has been assessed by the District Administration and CCL. The Tribunal will be constituted by the Central Government and will be headed by a person at the level of a High Court judge.

the final outcome, a functioning grievance redress mechanism which does not discriminate against the PAPs is in place.”⁵⁸

64. The Panel notes that in 1994, even before the original RAP was prepared, 127 out of 134 of the PAFs in the village of Parej were not satisfied with the compensation they had or would receive.⁵⁹ At that point, no one in Durukasmar, the other village of Parej East, had received compensation. The Panel also notes that the date of notification in Parej was 1983, a decade before the mine commenced. The date of notification of Durukasmar was 1986.⁶⁰
65. Coal India’s R&R policy provides that the “*value of land is determined on the basis of the prevailing legal norms.*” In examining the records, the Panel has observed that Bank staff preparing the Project were aware that compensation paid for land is usually inadequate.⁶¹ The Task Manager decided, however, that the issue should be dealt within each of the mine specific RAPs, stating that the “*ultimate test of whether compensation is adequate in light of OD 4.30 will be the provisions contained in the RAPs.*”⁶² As noted earlier, the Parej East RAP is not tailored to the situation at that mine and merely provides the usual Land Acquisition Act formula that is described in the Management Response.
66. It appears that the approach taken in the CSESMP has been standard for Bank supported projects in India, and a review of the literature shows that it has almost always given rise to problems in implementation.⁶³ The recent Implementation Completion Report (ICR) for the NTPC project sums up this experience as follows: “*These values are normally substantially under-reported and PAPs are usually compensated at considerably less than replacement cost, even with the customary 30 percent ‘solatium’ paid in addition to ‘market value’.*” The report goes on to point out the difficulty for the Bank in trying to secure compliance with a policy that required higher standards than are provided under state or national land laws. As Minewatch stated recently, compensation rates are not set by the Coal India Ltd. subsidiary, but by the local land revenue department. It takes an average of three sale deeds but the “*weakness of this is that the sale deeds reflect deflated rates in order to avoid tax - a deflated rate is written and the rest of the money is passed under the table.*”⁶⁴

⁵⁸ Id., para. 67.

⁵⁹ Baseline Socio-Economic Study (hereinafter ‘Baseline Survey’), table 6.3(B) p. 99 reports that most PAFs are dissatisfied with the compensation received.

⁶⁰ It has to be noted that the land was purchased by CCL and some PAPs had already received compensation before the Coal India Ltd. R&R policy came into effect. See also Baseline Survey, *supra* note 57, para. 2.2.3, and para. 6.2.1: “[i]n Parej nearly 60% of the families whose land has been acquired (40 out of 67) have received some compensation ...”

⁶¹ Project Files, November 3, 1994.

⁶² Project Files, May 17, 1994.

⁶³ See Early Experience with Involuntary Resettlement, Overview, June 30, 1993, p. 12 and p. 45 onwards.

⁶⁴ Minewatch, Request RQ02 India Coal Sector Environmental & Social Mitigation Project Credit 2866-IN India Coal Sector Reform Project Loan 4226-IN, February 25, 2002, p. 23. For reference see www.brettonwoodsproject.org.

67. In 1996, Management acknowledged that this system of valuation resulted in “*deflated values*,” even with the provision for interest and a solatium. Nevertheless, it accepted this problem on the grounds that there is a process of judicial appeal and the courts have routinely enhanced compensation that was found to be inadequate.⁶⁵
68. There is another problem. Towards the end of 1994, XISS, the NGO engaged by Coal India Ltd. to assist CCL, reported that “[i]t was observed that in many cases the land oustees did not receive the full amount of compensation. Even if the money was deposited in the bank in the name of the landed oustee, the middlemen take a share when the money is withdrawn from the Bank.”⁶⁶
69. **Clearly, the process is open to serious question. First, it does not provide a realistic avenue for appeal for many PAPs who may be illiterate and very poor. The direct costs of the appeal process have to be significant for poor people whose average income is less than 100 rupees per day. These costs need to be deducted from the compensation ultimately awarded to arrive at a figure for net compensation. In the meantime, the delays and the uncertainties that they may or may not end up with a sufficient sum to enable them to negotiate for alternative land, results in tangible harm.⁶⁷ And, at the end of it all, whatever money is deposited in the bank in the name of the landed oustee has to be shared with some middlemen when the money is withdrawn from the Bank.**
70. Coal India Ltd. maintains that these problems could not be avoided by purchasing land from landowners on a private basis. Management explains that: “*Coal India officials shy away from acquiring land through direct negotiations*” because in such negotiations “*there is always the risk of allegations of corruption.*”⁶⁸ Management has not explained why, if this is the case, the land required for other types of projects has been purchased on a private basis. Pointing out that this has been done in other projects, international NGOs considered this to be nothing more than an excuse to avoid the perhaps, higher, costs of privately negotiated purchases in the coal projects.⁶⁹
71. In 1997, under a new Task Leader, Management told NGOs that compensation be determined at the date of payment, rather than the date of notification. “*While CIL’s R&R policy does not distinguish between the notification date and the payment date, the Bank will request CIL to use the latter as the basis to estimate the land’s*

⁶⁵ Office Memo May 13, 1996, *supra* note 3, para. 6.

⁶⁶ XISS Report, *supra* note 25, para. 4.2.

⁶⁷ In addition to the appeal costs the PAPs must bear, the Panel notes that according to the Bank supervision team in 1997 and as Minewatch points out, compensation does not have to be paid in advance of Coal India Ltd.’s taking over the land, and lengthy appeals against valuation appeal tribunal’s decisions effectively delay and discount the compensation Coal India Ltd. eventually might pay. The process of purchase and appeal, described in the Management Response indicates that PAPs may only protest after the land has been vested in Coal India Ltd.

⁶⁸ See Request for Inspection, *supra* note 6, Attachment 7, The Berne Declaration, Mainstreaming Sustainability? The World Bank and the Rehabilitation of the Indian Coal Sector, April 26, 1996.

⁶⁹ Berne Declaration to World Bank, May 17, 1996, para. 2.2.

*replacement value*⁷⁰ (emphasis added). While this could improve the situation somewhat, as far as the Panel can ascertain, there has been no effective follow-up.

72. A basic principle of OD 4.30 is that “[d]isplaced persons should be (i) compensated for their losses at full replacement cost prior to the actual move ...” In light of the above, the Panel finds that, in Parej East, many of the displaced PAPs have not been and are not being compensated at full replacement cost, with the result that many of them have suffered and are still suffering harm.
73. The Panel notes that although the Land Acquisition Act reflects the principle in OD 4.30 that PAPs should be compensated for their land at its “market value,” in practice, it defines “market value” to be the registered value of plots in official land records. Since, as a rule, these values are substantially under-reported, the principle is effectively disregarded and the PAPs are usually compensated at considerably less than replacement cost, even with the customary 30 percent ‘solatium’ paid in addition to “market value.”
74. When affected landholders are not satisfied with compensation decided by CCL and the District Authorities, they may seek a decision to increase the amount from a special tribunal, constituted under section 14 of the Coal Bearing Areas Act. In this regard, the Panel considers it revealing that, in all cases so far finalized in Parej East, the Tribunal has awarded increased compensation to those PAPs able to lodge an appeal. In the Panel’s view, it is not appropriate that PAPs should have to go through a lengthy and costly judicial process to get just compensation, especially since not all PAPs can afford the direct costs of an appeal process and, even if they could, they would end up losing unless the costs of the appeal were added to their award. Even then, the delays and uncertainties associated with the process could result in tangible harm, especially since the awards are subject to further appeal by CCL. It is unfortunate to note that CCL is appealing all these decisions.
75. In light of this, the Panel finds that Management was not in compliance with paragraph 3(b) of OD 4.30.
76. There is yet another problem: the lack of transparency in the compensation process. In late December 1999, the PAPs from Borwa Tola were shifted under suspicious circumstances that are the subject of conflicting reports. Earlier in 1999, before the displacement of the Borwa Tola PAPs, CASS, asked for “*an itemized breakdown of land compensation giving the land grade, rates and items*” because “*a blanket*

⁷⁰ Office Memo May 7, 1997, Acting Secretary to Board of Executive Directors, p. 8, Management Response to The Berne Declaration, Outstanding Issues, February 7, 1997.

unitemized Award, as now, is unacceptable.”⁷¹ Under paragraph 8 of OD 4.30, the PAPs have a right to this information.

77. After the Borwa Tola PAPs were moved, the supervision team felt that in the future relations between CCL and the PAPs would be better and transparency would be promoted if PAPs were to have access “*to the house measurement report with information on compensation valuation at the Public Information Center.*”⁷² At the Parej East Public Information Center, the Panel team found, as did Management, only “*a specimen of a house compensation assessment.*” In 2000, the Environment and Social Review Panel (ESRP) stated that: “[t]he process of compensation payment should be quick, and [it should] require [an owner] to vacate the property at a specific agreed upon time.” In addition, the “[c]ompensation packages should be consistent, transparent and fair.”⁷³
78. **In the Panel’s view, as the Requesters claim, the compensation process in Parej East was and is not transparent. In light of this, the Panel finds that Management is not in compliance with paragraph 8 of OD 4.30.**

3.4. Level of Compensation for Houses

79. Paragraph 14 of OD 4.30 requires that valuation of all assets be made at replacement cost. According to the RAP, a CCL committee is responsible for the valuation and it is based on the plinth area of the building and the specification of construction.⁷⁴
80. The Requesters claim that “*the homestead compensation is being given at the depreciated dated value of the homestead, which compensation makes it impossible for the PAPs to build new houses with it.*”⁷⁵ In its Response, Management contends that it “*is satisfied that the compensation provided for houses enables the PAPs to construct a replacement house at par with their original house ...*”⁷⁶ The Second Management Response, which is attached to this Report, describes the method for calculating house compensation.⁷⁷
81. It appears that during its February 2002 supervision mission, Bank staff took measurements of a random sample of houses at the Pindra site to compare with the house compensation assessment record of the homes owned by the same PAPs in Borwa Tola before their displacement, as listed in. According to Management, in

⁷¹ See Request for Inspection, *supra* note 6, Attachment 49 para. 1, CASS to the Deputy Commissioner Hazaribag, dated December 17, 1999; Attachment 51 para. 4, CASS to Hasan and Dhar, January 27, 2000; Attachment 50, CASS to Kumar, January 27, 2000.

⁷² Project Files, February 28, to March 15, 2000 mission, para. 48.

⁷³ The Environment and Social Review Panel, May 2000 Site Visit, Final Report, (hereinafter ‘ESRP 2000 Report’), p. 25.

⁷⁴ Rehabilitation Action Plan for Parej East Opencast Project (hereinafter ‘RAP’), para. 3.4.2 A.

⁷⁵ Supplement to Request, *supra* note 22, para. 15, in Annex 2 of this Report.

⁷⁶ Management Response 2001, *supra* note 13, para. 72.

⁷⁷ See Management Comments 2002, *supra* note 34, para. 58, in Annex 3 of this Report.

three out of four cases, the new houses were bigger than the old ones and of better quality.⁷⁸ Management does not comment on the houses built at the other site, Prem Nagar.

82. Villagers told the Panel that they believed that there were inaccuracies in house measurements. The Panel also learned from an independent source that measurements were recorded in pencil so they could be altered later, opening the door to suspected abuse. And, as noted above, due to the unfortunate lack of transparency, the PAPs did not have access to information on the recorded measurements of their houses.
83. The Panel visited the Pindra resettlement site twice, and the houses that the PAPs had so far been able to build in the Pindra resettlement colony seemed to be as good, if not better, than similar houses they were shown in the area. It is not known, however, whether their new houses were as large as, and were constructed only with the money paid in compensation for, their old houses.
84. The Panel also visited the resettlement site at Prem Nagar. The size of this site clearly cannot accommodate eight families when they build houses of their own. At the time of the visit, there was only one house in which three families reside. Some families also occupied a community center.



Resettlement villages

Picture 1: Pindra

Picture 2: Prem Nagar

85. Since many of the oustees' original houses were constructed a long time ago, depreciation at 1.6 percent a year could be significant, in spite of the price escalation of five percent. Moreover, in view of the fact that housing costs have risen since their original houses were built, it is likely that the difference between the depreciated value of their old houses and the replacement cost of a new house could be significant. Under the practice noted above, it seems that the oustee is expected to cover this difference. **In the Panel's view, both the process and the basis for house compensation was open to abuse and raises serious questions, as in the case of compensation for land noted earlier.**

⁷⁸ Id., para. 60.

86. In April 2000, Coal India Ltd. made a major change to its R&R policy that gives the PAPs an additional option. They may take a one time cash grant of Rs50,000 in lieu of a house plot in the resettlement site. This grant is in addition to the above-noted compensation for loss of homestead land and house.⁷⁹ Since then, as the Management Response notes, 82 PAFs have chosen the cash option to relocate elsewhere than the resettlement site.⁸⁰ This means that since early 2000 all PAFs have chosen cash.
87. In their 2000 report, the ESRP stated that this option “*does have the advantage of being quick transparent and consistent.*”⁸¹ On the other hand, they said, “... *the World Bank’s resettlement policy is reluctant to accept cash payments in lieu of more complete resettlement support, and so care must be taken to ensure that such payments are not consumed leaving the PAPs destitute ...*”⁸² In their final 2001 report, the ESRP repeats an earlier recommendation: “[i]t is again strongly recommended that EPAPs be monitored after receiving payments of this kind to see what happens to them, to help assess the long-term result of this sort of approach”⁸³ (emphasis in original).
88. **In the Panel’s view, it is difficult, if not impossible, to reconcile the Bank’s aim of development with a one-time cash grant for acquisition of home and land. Presenting a poor oustee, whose previous source of survival included a small patch of land, with a check, probably more money than he or she has ever seen or expected to see in a lump sum, may be a legal way of getting them to move on, but it should not be confused with development. The Panel highlights that the ESRP’s has recommended that the Bank commission a post-Project audit to assess the long-term results of the cash settlement approach.**

3.5. Resettlement Sites

89. In its Response, Management explains that resettlement sites compensate for loss of villages. There are two resettlement sites for Parej East. The main one is Pindra, where around 20 Project-affected families (PAFs) have settled.⁸⁴ The other is Prem Nagar where three PAFs have settled.⁸⁵

⁷⁹ See November 2000 Aide Memoire, p. 6.

⁸⁰ Management Response 2001, *supra* note 13, para. 56.

⁸¹ ESRP, 2000 Report, *supra* note 73, p. 6.

⁸² *Id.*, p. 23.

⁸³ *Id.*, p. 50.

⁸⁴ Management has provided the Panel with different accounts of how many families have moved to the Pindra resettlement site. Management Response 2001, *supra* note 13, para. 56, reads that “[o]f the families who have resettled, 23 PAFs have settled in the Pindra resettlement site...” Management Response 2002, *supra* note 35, para. 59, states that “...16 PAFs [are] residing in the Pindra resettlement site...”

⁸⁵ *Id.*, para. 54, and para. 56.

3.5.1. Choice of Site

90. Drawing upon the 1994 Baseline Survey, which states that “95% of the PAPs were not aware of the site for rehabilitation,” CASS in 1996 claimed that the PAPs have never been consulted in the choice of the Pindra resettlement site.⁸⁶ On the other hand, Management claims, the selection of the Pindra resettlement site “has been made in consultation with the PAPs.”⁸⁷
91. In the original 1994 RAP, it was reported that the land for the resettlement site had already been acquired and was under the physical possession of CCL; that it had been surveyed, and that a contour plan had been prepared as well as a detailed layout plan of the complex with provision for 339 housing plots.⁸⁸ All this, the RAP reports, was done in consultation with the PAPs. In addition, “[a]ll PAPs have agreed to shift to [the] site.”⁸⁹ The Baseline Survey, however, prepared about a month earlier makes it clear that this was not so.⁹⁰
92. The Turi Tola refused to move to Pindra and, in 1997, the ESRP took up the question of their relocation. They observed that: “[t]he families that are currently refusing to move were resettled by the TISCO mines 25 years ago and resettled themselves on government land for which they never received any legal title. They feel that CCL management has not listened to their grievances – not sat in their village and listened to them ... The promised resettlement site has still not been built and they see no prospect of employment.”⁹¹
93. The ESRP also confirms that PAPs generally complained that they had never been consulted in selection of the sites. They were guided to a pre-selected site and told to move there.⁹²
94. The ESRP felt that “[r]esolution of the Parej East dispute is urgently required.” In their view, “[t]he dispute will not be resolved amicably unless CCL makes a new beginning and starts to listen sympathetically to the villagers’ grievances. We believe that bringing CASS into any new dialogue with the villagers is a necessary part of achieving an amicable settlement” (emphasis added).
95. The nine Turi Tola PAFs were eventually involuntarily displaced in May 1998. Represented by CASS, they took the view that they were not to be forced to relocate to Pindra as a result of a Court order provoked by an incident related to the impact of blasting, as the mine expansion came closer to their back doors. They chose, and

⁸⁶ See Request for Inspection, *supra* note 6, Attachment 6 para. 5.7, CASS/JJM to World Bank: Report on the East Parej OCP, April 20, 1996.

⁸⁷ Management Response 2001, *supra* note 13, para. 53.

⁸⁸ RAP, *supra* note 74, para. 7.3.

⁸⁹ *Id.*, para. 7.2.

⁹⁰ Baseline Survey, *supra* note 59, para. 6.1.

⁹¹ Environmental and Social Review Panel, 1997 First Site Visit (Northern, Central and Mahanadi Coalfields), Report, p. 51 (hereinafter ‘ESRP 1997 Report’).

⁹² *Id.*, p. 29.

CCL agreed to a resettlement site they preferred at Prem Nagar. Only three families relocated to Prem Nagar. The others moved to temporary accommodation in CCL's employee quarters to give them time to construct houses. They are still there.⁹³

96. **It seems evident that PAPs in Parej East were not consulted in the selection of the Pindra resettlement site as required by OD 4.30. In light of this, the Panel finds that Management was not in compliance with paragraph 8 of OD 4.30.**

3.5.2. Causal Labor Opportunities

97. Paragraph 13 of OD 4.30 provides that "*For land-based resettlement, the new site's ... locational advantages should be at least equivalent to those of the old site.*" Paragraph 18 concerns access to employment and requires that the RAP should, where feasible "*exploit new activities made possible by the main investment requiring the displacement ...*"
98. The Requesters claim that "*Pindra is further away from causal labor opportunities.*"⁹⁴ Management responded that "[t]he distance from the Pindra resettlement site to causal labor opportunities ... is roughly the same as was the case with Borwa Tola, namely 1.5 to 2km."⁹⁵ (See Map 1).
99. Another issue is related to this. "*As of the date of this submission,*" the Requesters claim, "*many PAPs are still residing in pathetic condition on a temporary basis in the company quarters and barracks.*"⁹⁶ In its Response, Management states that the PAFs living in barracks told the February 2002 supervision team that they "*were not interested in shifting to the resettlement site, since many male and female PAPs were now earning an income from different forms of causal labor related to the mine and mine colony. One PAP had even built his own house within the compound where the barracks were located*" (emphasis added).⁹⁷
100. The Panel also notes that the Baseline Survey found that the principal occupation for 51.48 percent of the PAPs was non-agricultural labor work.⁹⁸ The RAP discusses

⁹³ A local independent professional visited Prem Nagar with the Panel. Although the site is said to have been selected at the instance of the Turi themselves, he felt that it was an unfortunate choice. He pointed out that the site is located just outside the boundary wall of the CCL Colony and the contrast between the two worlds is appalling. To take advantage of some facilities available in the Colony, a big hole has been made in the boundary wall, which separates the Colony from the settlement site. The comparative deprivation of the Turi families has thus been made very apparent. He also pointed out that the forests are adjacent to the Colony and there is frequent encroachment on the forest area by the resettled families leading to quarrels with the local forest guards resulting in harassment of these families. The number of families on this site is so small that no school and health facilities have been provided. Some Turi children have been enrolled in a local government school which is about one kilometer from the Prem Nagar Colony.

⁹⁴ Supplement to Request, *supra* note 22, para. 16, in Annex 2 of this Report.

⁹⁵ Management Comments 2002, *supra* note 34, para. 63, in Annex 3 of this Report.

⁹⁶ Supplement to Request, *supra* note 22, para. 16, in Annex 2 of this Report.

⁹⁷ Management Comments 2002, *supra* note 34, para. 62, in Annex 3 of this Report.

⁹⁸ Baseline Survey, *supra* note 59, para. 4.5.2.

access to economic activity from the Pindra site, maintaining that PAPs would be able to take advantage of opportunities in a number of new collieries and two new local washeries planned for the near future in the area.⁹⁹ Access to work around the Parej East mine is not mentioned.

101. In its Response, Management only mentions the labor opportunities for Pindra resettlers at the coal loading dump, not opportunities for casual labor or informal labor at the mine site which is about 3km away. This lack of opportunity appears to be confirmed by the fact that PAFs, who were moved to very poor temporary accommodation (barracks) to allow them some months to build their houses at Pindra, have not yet moved there about three years later.
102. **The Panel visited the barracks beside the CCL Headquarters and observed that the conditions are pathetic, as the Requesters claim: they are hardly fit for human habitation, especially families. Even so it would now appear that the seven PAFs regard remaining there a better alternative than building a house in Pindra because of the proximity of the barracks to casual labor opportunities and the informal economy at the mine site. The Parej East RAP limited its discussion of casual labor opportunities for resettlers at Pindra to mentioning some future nearby industrial development. The Panel could not find any record of a professional analysis of the pre- and post- relocation casual labor market. Those who have moved to Pindra thus have superior physical accommodation but lack access to formal and informal labor opportunities at mine site. Thus in neither case have these PAPs regained their former standard of living.**

3.5.3. *Size of Plots*

103. Paragraph 19 of OD 4.30 provides that “[p]lanning for shelter, infrastructure, and services should take into account population growth.” Paragraph 13 of OD 4.30 states that “*the new sites productive potential ... should be at least equivalent to those of the old site...*”
104. The Requesters state that “*the allowed plot of land of 200 sq.m. makes second generation growth ..., [and] vegetable garden and domestic animal rearing impossible.*”¹⁰⁰ Management maintains that the site allotted to the PAFs in the resettlement sites is twice the size prescribed in Coal India Ltd. R&R policy, which is 100m². In addition, each married son who lived in joint families before relocation receives a separate plot. Of the 1around 20 PAFs residing in the Pindra resettlement site, six are married sons, who received a separate plot.¹⁰¹ Management also states that the supervision team visited Pindra in 2002 and found that 12 of the families

⁹⁹ RAP, *supra* note 74, para. 7.6.

¹⁰⁰ Supplement to Request, *supra* note 22, para. 16, in Annex 2 of this Report.

¹⁰¹ Management Comments 2002, *supra* note 34, para. 59, in Annex 3 of this Report. See also Management Response 2001, *supra* note 13, para. 56, which talks of 23 PAFs at Pindra.

keep animals; five have vegetable gardens on their plots, while other PAFs decided to utilize that space for soft coke coal production.¹⁰²

105. In the case of another CCL mine (K.D. Hesalong), the Panel notes that, following a visit in April 1997, a Bank Social Scientist reported that 20 households had been allotted 50 plots of 100m². This, he explained, was because unmarried sons and daughters are defined as individual PAFs and entitled to separate plots. Therefore a household with a father, mother and three unmarried children would receive four plots.¹⁰³
106. During its visit to the Prem Nagar site, the Panel Team observed that a family was grazing a cow. At the same time, however, when the Prem Nagar PAFs made a vegetable garden a few yards from their plot, the Forestry Department stopped it. The Team observed that the area was scrubland – not forestland - and wondered why this land cannot be used for kitchen gardens. Accompanying officials informed the Panel that these activities by the PAFs were causing problems with the Forest Department. They were simply not allowed to engage in such activities on the land adjacent to the site owned by the Forest Department.
107. As regards plot size, the Requesters point out that in Madhya Pradesh and Orissa 400m² are provided.¹⁰⁴ The Management explains that while “[t]he *Madhya Pradesh Package of 1991 and the Orissa Package of 1989 provided plots in resettlement sites of 400 sq.m.*,” this was superseded by Coal India Ltd.’s 1994 policy “*which sets out to ‘streamline the different resettlement and rehabilitation practices being followed by the subsidiaries and to modify these’.*” But, *as is the case with the Parej East mine, all other subsidiaries (except CCL’s K.D. Hesalong) provide resettlement plots that are larger than the 100m².*¹⁰⁵
108. The Requesters acknowledged that the resettlement plot had been increased from 100m² to 200m². but pointed out that this would only be sufficient when people have independent sources of income. At Parej East, people needed to supplement their income and that is why they asked for 500m².¹⁰⁶ Some weeks later in November 1996, they made the same point to Coal India Ltd. as one of the reasons the Turi Tola residents did not want to move to Pindra.¹⁰⁷ Management agreed that 100m² might not suffice for second-generation expansion but pointed out that under Coal India Ltd. R&R policy each adult is a unit of entitlement. Management said, however, that it would urge Coal India Ltd. to consider giving families more than

¹⁰² Id., para. 61. The animals consisted mostly of goats and pigs, and two families had cattle.

¹⁰³ May 1997 BTO, p. 10. Unmarried sons and daughters are those who turned 18 before the cutoff date.

¹⁰⁴ Supplement to Request, *supra* note 22, para. 16, in Annex 2 of this Report.

¹⁰⁵ Plot sizes vary depending on the availability of land and the number of PAFs to be resettled. The largest plots are provided in Belpahar, MCL, and are 400m², while Jagannath, MCL, provides plots of 200m². In the SECL mines of Gevra and Dipka the plot sizes are 240m² and in Kusmnda they are 150m².

¹⁰⁶ See Request for Inspection, *supra* note 6, Attachment 14 para. 12, CASS to World Bank, Responses to Response, dated November 1996. In support, the Berne Declaration also took up the issue; see Attachment 20 para. 2, The Berne Declaration, Outstanding Issues, dated February 7, 1997.

¹⁰⁷ See Id., Attachment 15, CASS to Chaoji (CIL), dated November 17, 1996.

one plot of land, which would also provide room for “*certain commercial activities such as gardening.*”¹⁰⁸

109. It seems clear that the Bank’s supervision team has been recommending that the Coal India Ltd. policy be changed: that the minimum plot size per family be increased above 100 m², and that unmarried “*sons*” aged 18 years and over should be entitled to additional plots in resettlement sites. The Team’s Aide Memoire of June 2001 recommended that the practice in most subsidiaries of allotting plots of 200m² or more should be made part of Coal India Ltd. policy in order to provide room for second generation expansion as required by OD 4.30. The Panel also notes that this was one of the flaws the Bank lawyer pointed out in the Coal India Ltd. R&R policy during Project Preparation.
110. Management accepted Coal India Ltd. R&R policy on the clear understanding that it would “*have to review each RAP to be sure it contains the obligatory requirements for a successful RAP.*”¹⁰⁹ **The Parej East RAP simply repeated Coal India Ltd.’s R&R policy in respect of the size of plots and did not provide for second-generation growth or land for gardens and animals. The Panel therefore finds that Management’s appraisal of the Parej East RAP was not in compliance with paragraphs 13 and 19 of OD 4.30. However, in practice, Management recognized this flaw, and in response to CASS insistence, CCL allocated plots twice the size of that provided for in the RAP. In addition, since implementation commenced, Management has continued to press Coal India Ltd. to change its policy.**

3.5.4. *Water, Health and Services*

111. The Request alleges that the water sources in the resettlement sites are polluted and the wells are not fit for drinking, “*medical services have not been provided to handle the increased illness,*” nor have any teachers been provided for the school. And, CASS maintained, “*efforts, if any, to involve local governing bodies to provide such services have produced no results.*”¹¹⁰
112. To ensure economic and social viability, paragraph 19 of OD 4.30 requires that water and social services (e.g. schools, health care centers) should be provided. According to paragraph 5(i) they should be provided for in the RAP. The Parej East RAP states that the PAPS would shift to the development site only after this infrastructure had been provided.¹¹¹ It also states that relocation of the PAPs to Pindra would not affect the host community’s water supply “*as it is proposed to develop these facilities for the complex independently.*”¹¹²

¹⁰⁸ Office Memo May 7, 1997, Acting Secretary to Board of Executive Directors p. 9, Management Response to The Berne Declaration, Outstanding Issues, February 7, 1997.

¹⁰⁹ Project Files, May 13, 1994.

¹¹⁰ Supplement to Request, *supra* note 22, para. 18, in Annex 2 of this Report.

¹¹¹ RAP, *supra* note 74, para. 7.4.

¹¹² *Id.*, para. 7.7.

113. **Potable water.** In January 2000, CASS wrote that when they were first shifted “[t]he Pindra people used the host community well [because] the 2 wells and one hand-pump do not provide potable water.” In its Response, Management reports that the 2001 testing of the water at both Pindra and Prem Nagar sites was favorable.¹¹³
114. When nine families from Borwa Tola were moved to Pindra in December 1999, they needed to use a host community well, but they were prevented from doing so because the host community fenced it in. As a result, the women had to walk about a kilometer to fetch potable water. According to CASS, the host community resented sharing their well with the resettlers. Management does not dispute this and says that the host community was resentful because they were of a higher caste. Interviews at the site revealed that the host community withdrew its objections to the sharing of the well when it realized that only about 20 families were expected, rather than around 200.
115. Management also stated that about six weeks after relocation, mine officials had cleaned up two open wells on the site. They also promised to upgrade them and, in addition, to provide two tube wells.¹¹⁴ Nevertheless, it seems clear that access to potable water at the Pindra resettlement site had not been either pre-planned or pre-arranged. This raises the question of why the families were moved before access to potable water was assured.
116. **Based on the Panel’s review of the records available, it seems clear that the date set for the families to move to Pindra, December 15, 1999, was dictated by the scheduled mine expansion. Both the September and November 1999 supervision team doubted that CCL could be ready by the scheduled date of December 15, 1999. Nevertheless, the PAFs were relocated late December.**
117. **In the Panel’s view, the host community’s initial opposition to allowing the PAPs to have access to their well indicates a failure to consult with the host community as required by paragraph 8 of OD 4.30. By failing to ensure access to potable water before the PAPs were moved to the Pindra resettlement site, the Panel finds that Management was not in compliance with paragraph 19 of OD 4.30.**
118. **Access to Health Care.** In response to the Requester’s claim that medical services have not been provided to handle the increased illness, Management explains that the access to health services for PAPs in the Pindra and Prem Nagar resettlement sites “*is on par with that before the resettlement. Prior to displacement, the PAPs had access to a hospital run by TISCO about 4km from Parej Village. Medical facilities are also available at the Mine Colony at Tapin about 0.5km from the*

¹¹³ Management Comments 2002, *supra* note 34, para. 70-71, in Annex 3 of this Report.

¹¹⁴ See Request for Inspection, *supra* note 6, Attachment 52 para. 6, World Bank to CASS, dated February 8, 1996.

*Pindra resettlement site, and at the Government Public health center at Chari about 9km away.*¹¹⁵

119. A number of PAPs complained to the Panel, not about location of the health clinics, but about their real or perceived ability to get treatment. During interviews, staff acknowledged that staffing of the facility at Pindra is a problem and maintained that it involved the relationship between CCL and the appropriate District authorities.
120. **Health Status.** CASS states that a total of 21 people had died since 1998 in Parej East for various causes, including accidents, TB, malaria, and alcoholism, which are in some way project-related.¹¹⁶
121. Management refutes CASS's allegations and, based on two recent health surveys conducted in the area, suggests that: "*the health related issues raised by CASS are a result of a variety of economic, political and social factors, which pre-date the project.*"¹¹⁷ It also provides an examination of these two studies and their relationship in general to Parej East.¹¹⁸
122. **In the absence of statistics to show that morbidity and mortality in Parej East might be outside the norm, the Panel is of the view that, it would be extremely difficult, if not impossible, to ascribe any alleged increases to the Project.**
123. **Schools.** On its initial site visit, the Panel confirmed that the Pindra site included a building for the school and that it was unused since no teacher had been provided. In its Response, Management points out that CCL maintains that its responsibility ended with the construction of a school building. In their view, it was the State's responsibility to provide the services, including a teacher.¹¹⁹ In the absence of a teacher, Management states that children living in Pindra go to school outside the resettlement site.
124. It should be noted that the State of Jharkand, where the Parej East mine is located, was created in August 2000 through a division of the former State of Bihar. It goes without saying, perhaps, that this division and the establishment of the new State's government, resulted in some exceptional problems limiting its ability to provide the normal range of services.

¹¹⁵ Management Response 2001, *supra* note 13, para. 53.

¹¹⁶ Management notes that as Agraria Tola is an IPDP village, there has been no land acquisition related to the Bank assisted Parej East mine. The latest mine plans indicate that this village is unlikely to be displaced for another 12 to 15 years.

¹¹⁷ See Management Comments 2002, *supra* note 34, para. 35, in Annex 3 of this Report. The health surveys are 'The National Family Health Survey' (NFHS-2), Bihar 1998-1999, International Institute for Population Sciences, Mumbai, India, 2001; and 'The Myth of the Healthy Tribal: Health Modernity in Two Rural Blocks of Chotanagpur', Bihar, Ranchi University, Report on the Indian Council of Medical Research Task Force Health Modernity Education Project, Singh, A.K., et. al (1997). *Id.*, p. 13 notes 5-6.

¹¹⁸ *Id.*, para. 32-37.

¹¹⁹ Management Response 2001, *supra* note 13, para. 59.

125. The Pindra school was built to accommodate 257 families. Only around 20 PAFs have relocated, and since most PAFs are now taking cash compensation, it is unlikely that this population will increase. In the meantime, children from Borwa Tola are attending a private school about 0.5km from Pindra as well as another school about 2.5km away.¹²⁰ Pointing out that CCL “recently” arranged for the teacher of the Parej school to be transferred to the Pindra school, Management states that CASS insisted, and CCL agreed, that the Parej teacher be moved to Lower Barrisom village school instead.¹²¹
126. **In the Panel’s view, in a situation where most of the PAPs are poor and illiterate, the parents would need every incentive to continue with their children’s education. In this instance, in December 1999, the PAPs from Borwa Tola were involuntarily relocated some distance away to Pindra. There they found a school building with no teachers, despite OD 4.30 and promises to the contrary. The Panel therefore finds that Management was not in compliance with paragraph 19 of OD 4.30.**
127. **The Panel recognizes, however, that the current situation differs completely from that anticipated in 1999. With the late 1999 introduction of cash compensation, and the real prospect that the population of the Pindra site will not increase beyond around 20 instead of about 227 families, a new approach is appropriate.**¹²²

3.6. Cultural Property

128. The Requesters raised cultural property issues in the Request for Inspection and, in the past, during implementation. In its Response, Management explains that the Sectoral Environmental Assessment for the project did not identify any issues related to cultural property, and OPN 11.03 on Management of Cultural Property in Bank-financed Projects was therefore found not to apply. Nevertheless, Management maintains that during implementation they have dealt with issues raised by PAPs regarding sites of religious importance in a manner consistent with OPN 11.03. These instances, as well as specific issues raised in the Request are explained in detail in Management’s Responses.¹²³
129. **While there are irresolvable issues related to cultural property management, in the Panel’s view, Management has acted responsibly in consulting local people**

¹²⁰ Ibid.

¹²¹ These schools include the state government school and the DAV school in Tapin, and, a private school and an English medium school operated by the Parej East mine. See in Management Comments 2002, *supra* note 34, para. 66-68, in Annex 3 of this Report, where Management provides very specific details of where the children, particularly the tribals, are now going to school. In this case, Management refers to 16 PAFs; *supra* note 84

¹²² *Supra* note 84.

¹²³ Management Response 2001, *supra* note 13, para. 88-89. See also Management Comments 2002, *supra* note 34, para. 38-41, in Annex 3 of this Report.

and has acted in good faith in attempting to mitigate the issues. It therefore finds Management in compliance with OPN 11.03.

3.7. Title to House Plot

130. The Requesters claim that PAPs are “*living in a [resettlement] colony without legal possession of any land, whereas [before] they were landowners.*”¹²⁴ Further, “[i]t is absolutely essential for an effective rehabilitation that legal ownership title be provided to the villagers.”¹²⁵ In fact, they add, the PAPs are being given ‘*pattas*’ (title to land), with no legal value.¹²⁶
131. OD 4.30 requires: “[f]or both rural and urban resettlement, the borrower needs to ... make legal arrangements for transferring titles to resettlers” and “paying special attention to the adequacy of the legal arrangements concerning land title, registration, and site occupation.”¹²⁷
132. In its Response, Management acknowledges the problem. It states that the “CCL has issued ‘temporary pattas’ allotting specific house plots to the PAFs who chose the resettlement sites.” Management explains the effort the supervision team has made over the years to address this situation and adds that “[t]he supervision team will continue to seek a resolution to this issue.”¹²⁸
133. In 1991, during the very early stages of Project Preparation, the Bank sociologist wanted to be sure homestead owners would have title to land after relocation.¹²⁹ It appears that the question was not raised further during Preparation of the Project or of the RAP. The Panel notes that CCL had already acquired the Pindra resettlement site under a law that did not enable the award of titles by the time the RAP was prepared.
134. Both before the CSESMP was approved,¹³⁰ and later in 1996, CASS pointed out that the Turi Tola residents must be assured that they would have rights over the land, which would protect them against the possibility that a “traumatic displacement will

¹²⁴ Request for Inspection, *supra* note 6, para. 4(b).

¹²⁵ Supplement to Request, *supra* note 22, para. 17, in Annex 2 of this Report.

¹²⁶ *Id.*, para. 17.

¹²⁷ OD 4.30, Alternative Sites and Selection, para. 13(c); and Valuation of and Compensation for Lost Assets, para. 14(a).

¹²⁸ Management Response 2001, *supra* note 13, para. 57. “A specific patta format for Pindra resettlement site was submitted to MoC on April 1, 2000. MoC required that CCL submit additional information. This was done on December 5, 2000, and although the matter is still unresolved, CIL are following up with MoC.”

¹²⁹ Project Files, April 20, 1991, p. 3; “we would like clarification as to whether the PAPs would have clear title to their house plots and what the conditions would be for resale. This title should also be in the name of both the husband and wife. This practice is being adopted in resettlement schemes in other parts of India.”

¹³⁰ Request for Inspection, *supra* note 6, Attachment 6 para. 8.4, CASS/JJM to World Bank: Report on the East Parej OCP, dated April 20, 1996.

not happen a third time.”¹³¹ At that time, the only relocation offered the Turi Tola PAPs was the Pindra site. CASS stressed that it was “*CCL lease land, and they will have no legal title over it.*”¹³² Early in 1997, international NGOs took up the issues and requested Management to resolve it before Negotiations for the CSR. ¹³³ Management recognized the problem and proposed cross conditionality with the CSR, asking for ownership titles or 99-year leases.

135. In July 1997, the Minutes of the CSR Negotiations set out what was agreed: “[t]he Indian delegation has reconfirmed its commitment to the requirement under OD 4.30 that land titles or long term leases for house-plots in resettlement sites will be given to all entitled project affected people ... The borrower agreed to take the necessary action to obtain from the relevant authorities written waivers or consent to grant PAPs renewable long-term leases with the rights 1. to mortgage such leases in favor of institutions or individuals and 2. to transfer such a lease upon the death of the lessees.”¹³⁴
136. A Supplemental letter to the Loan Agreement shows that this was expected to affect 182 PAPs from Parej East between 1998 through 2001; i.e., those who were expected to be displaced in that period. The Agreement also shows that this was an issue at 13 mines. It affected a total of 2,626 PAPs at seven mines, and an unknown number at six mines.
137. In the meantime, nine families from the Turi Tola hamlet were involuntarily resettled in May 1998. Beginning in September 1998, and again in December, CASS wrote to the Bank for help. It informed the Bank that “*in the court agreement with the Turi Tola people, the agreement for legal papers (pattas) for allotted house sites totaling 200 sq. m on a lease for 30 years has not been implemented. The people have been given ‘CCL certificates’ which have no legal or government recognition at all. Further, at the termination of the mine (30 years) all land will revert to the Government. This is a crucial point in the rehabilitation program.*”¹³⁵
138. The records show that the supervision teams have consistently reiterated Management’s expectations that an appropriate solution would be found.¹³⁶ Nevertheless, as both Responses by Management acknowledge, the issue is still unresolved. The December 1998 Aide Memoire acknowledged that not only does the lack of ‘pattas’ leave the people with a sense of insecurity, but also it prevents

¹³¹ Id., Attachment 16 para. 5 “consideration” 4, CASS to Deputy Commissioner Hazaribag, dated December 12, 1996.

¹³² Id., Attachment 15, CASS to Chaoji (CIL), dated November 17, 1996.

¹³³ Id., Attachment 20 para. 2, The Berne Declaration, Outstanding Issues, dated February 7, 1997.

¹³⁴ Project Files, Agreed Minutes of Negotiations for India Coal Sector Rehabilitation Project, July 23, 1997, para. 38.

¹³⁵ Request for Inspection, *supra* note 6, Attachment 44 para. 8, CASS to Christensen, dated December 12, 1998.

¹³⁶ Project Files, April 13, 1998, para. 4.2. See also Id., May 14, to June 5, 1998 mission, para. 22.

them from accessing finance for income generation schemes. As a result, implementation of these schemes is undermined.¹³⁷

139. In February 1999, however, Management informed CASS that the issue was “*a state government matter and outside the authority of CIL.*”¹³⁸ CASS asked for an update in July 1999 because of the trouble the PAPs at Prem Nagar were having with the Forest Department. It had evicted and detained a PAP because he was building a house there. Cass explained that their “*consistent demand for land pattas ... has been precisely to avoid this sort of situation where the PAPs become hapless victims between two powerful groups.*” Recognizing that the Task Leader took the matter seriously, CASS pointed out that “*again, on the ground the situation has not changed.*”¹³⁹
140. In December 1999, PAPs were involuntarily moved from Borwa Tola. About a year later, correspondence indicated that Coal India Ltd. was pursuing the matter of leases before the Ministry of Coal (MoC).¹⁴⁰ Coal India Ltd. had been informed that lease agreements for 99 years in favor of PAPs could be drafted separately, subject to approval of the Law Ministry, on a case-by-case basis. Coal India Ltd. asked for prompt decisions.
141. The February 2002, Aide Memoire confirms that the December 2000 application for titles in Pindra mentioned in the Management Response has gone nowhere. It says that “*CIL will resubmit the specific case applications before February 28, 2002.*”¹⁴¹ It adds that the issue is expected to be resolved soon “*... so that PAFs can have security of tenure for their plots in resettlement sites.*” The Panel was also informed that a 30-year renewable lease, rather than the 99-year lease that the Bank had sought, would be offered.
142. In its 2002 Response, Management maintains: “*[a]lthough this specific issue has not adversely affected the resettlement process, the Bank has raised this issue during every supervision mission with both the CIL and the Government of India*”¹⁴² (emphasis added). The Panel cannot agree that this issue has not adversely affected the resettlement process. The opposite is clearly the case, at least for these PAPs who, as a supervision team pointed out, are suffering from a sense of insecurity and inability to borrow. In addition, PAPs worry that they will be moved again. If so, will they get compensation? And what about the question of inheritance?
143. Considering the lack of title, the Environmental and Social Review Panel (ESRP) stated that “*[t]he major flaw in CIL’s resettlement planning is that settled farmers go from being landowners with full land rights to land users, given only a patta,*

¹³⁷ See December 1998 Aide Memoire, para. 10.

¹³⁸ Request for Inspection, *supra* note 6, Attachment 45 para. 8, World Bank to CASS, dated February 14, 1999.

¹³⁹ *Id.*, Attachment 46 para. 3, CASS to Mohan, dated July 24, 1999.

¹⁴⁰ Project Files, December 5, 2000.

¹⁴¹ February 2002 Aide Memoire, para. 30.

¹⁴² Management Comments 2002, *supra* note 34, para. 65, in Annex 3 of this Report.

which gives them usufructory rights to the land, not ownership. Such usufruct land cannot be alienated in most states. Thus ownership is traded for a lease.” In addition, they note that in the case of another involuntary move for further mine expansion, *“it is unclear whether a patta holder would be eligible then for any compensation on subsequent moves, or whether he would be added to the growing number of the landless merely being expelled without compensation by the mines.”*¹⁴³

144. **It is clear that the question of title transfer should have been identified and dealt with when the Parej East RAP was prepared, as required under OD 4.30. CCL had already purchased the Pindra resettlement site by that stage. Now, up to four years after the affected people have been involuntarily resettled they are still suffering the harm that results from lack of title, including a sense of insecurity and, as Management itself has stated, an inability to borrow for self employment income restoration schemes.**
145. **In light of the above, the Panel finds that Management was not in compliance with paragraphs 13(c) and 14(a) of OD 4.30 when the RAP for Parej East was prepared.**
146. **The Panel realizes that supervision missions have raised the issue repeatedly. It has not been able to ascertain whether a renewable 30-year lease provides the same security of tenure as the 99-year lease that Management demanded. It is understood that Management is continuing to follow this issue closely through arrangements for post-Project monitoring and reporting.**

3.8. The Grievance Mechanism

147. Since 1996, CASS’s allegations regarding the grievance redress mechanisms have focused on the PAPs’ participation in the committees formed to hear their grievances. The Requesters point out that *“the people’s participatory committees do not function as representative of the people because democratic procedures have not been used in their selection.”*¹⁴⁴ They claim that the grievance redress committee established in Parej East does not include an independent party among its members and that its PAPs representatives have been selected without consulting the people they are presumed to represent.¹⁴⁵
148. With respect to grievance redress instruments, paragraph 12 of OD 4.30 requires that each resettlement plan include *“the grievance procedures available for disputes over land acquisition.”*¹⁴⁶ The policy calls for a *“clear understanding of the legal*

¹⁴³ Environmental and Social Review Panel, July 2001, Final Report, p. 50 (hereinafter ‘ESRP 2001 Report’).

¹⁴⁴ Supplement to Request, *supra* note 22, para. 20, in Annex 2 of this Report.

¹⁴⁵ See Request for Inspection, *supra* note 6, Attachment 14 para. 10(a), CASS to World Bank, Responses to Response, dated November 1996; Attachment 18 para. 4, CASS to World Bank, December 12, 1996; Attachment 23, CASS to CCL, March 3, 1997.

¹⁴⁶ OD 4.30, Land Tenure, Acquisition, and Transfer, para. 17.

*issues involved in resettlement” among which “the legal and administrative procedures applicable including the **appeals process** and the normal time frame for such procedures ...”¹⁴⁷ (emphasis added).*

149. Paragraph 25 of Coal India Ltd.’s R&R policy requires a mechanism to deal with disputes and that its membership include “*an independent party, such as a respected community leader, a retired judge or principal of a reputed local institution of higher education*”¹⁴⁸ (emphasis added).
150. In its Response, Management describes in detail the committees formed at various points to solve grievances in Parej East.¹⁴⁹ The Response added that a grievance register is available at the Public Information Center (PIC) in Parej East. Allegedly, 30 grievances have been recorded.¹⁵⁰ Management claims that the low number of recorded grievances is due to CCL’s prompt dealing with the PAPs’ petitions as soon as they are submitted.¹⁵¹ In its second Response, Management focused mainly on the selection of PAP representatives, asserting that selection “*is always done by the PAPs themselves.*”¹⁵²
151. The RAP for Parej East describes the grievance procedures.¹⁵³ The compensation grievance committee provides for “*a local respected community leader*” but does not state that such a person be independent.¹⁵⁴ The RAP also describes the PAPs right of appeal to a judicial tribunal composed of a High Court Judge or a Judicial Commissioner. The Tribunal’s decision can also be challenged in the High Court or Supreme Court.¹⁵⁵
152. **Since a grievance mechanism was established in Parej East and appeals process described, the Panel finds that Management is formally in compliance with paragraph 17 of OD 4.30. However, Bank staff were unable to confirm whether any independent person was on the grievance committee. The Panel is also concerned that it was unable to establish whether or not PAP members are elected democratically or are selected by authorities.**

¹⁴⁷ Id., Legal Framework, para. 12.

¹⁴⁸ See CSESMP SAR, *supra* note 2, Annex 2.4, Coal India Ltd.’s Resettlement and Rehabilitation policy, para. 25.

¹⁴⁹ Management Response 2001, *supra* note 13, para. 40.

¹⁵⁰ Id., para. 41.

¹⁵¹ Ibid.

¹⁵² Management Comments 2002, *supra* note 34, para. 73, in Annex 3 of this Report.

¹⁵³ RAP, *supra* note 74, para. 6.2.

¹⁵⁴ Id., para. 6.3.

¹⁵⁵ Ibid.

Chapter 4

4. Traditional Land Rights

153. Paragraph 3(e) of OD 4.30 on Involuntary Resettlement stipulates that “*land, housing, infrastructure, and other compensation should be provided to the adversely affected population, indigenous groups, ethnic minorities, and pastoralists who may have usufruct or customary rights to the land or other resources taken for the project. The absence of legal title to land by such groups should not be a bar to compensation” (emphasis added). As far as indigenous people are concerned this provision is cross-referenced to OD 4.20 on Indigenous Peoples. Therefore relevant provisions in that OD must be applied.*
154. Coal India Ltd.’s R&R policy, reflected in the RAP for Parej East, provides that tribals cultivating land under traditional rights will be entitled to exactly the same compensation and rehabilitation as title holders (tenancy land holders). In Parej East, 77 percent of the people to be displaced were tribals, according to the Indian classification system. Most of the land acquired for the mine expansion was not tenancy land but Government land, which tribals were cultivating under traditional rights.
155. As regards tribals cultivating land under traditional rights, CASS asserts that in Durukasmar and other villages compensation is being paid only for tenancy land and not for Ghar Mazarua and other types of customary land usage.¹⁵⁶ “*The PAPs have made innumerable attempts to have their traditional rights registered, but it was bureaucratic indifference which prevented them from having it registered. Now there is consistent and firm refusal to acknowledge their traditional rights. GOI says it is not their policy, but in other ways they adjust according to the WB demands.*”¹⁵⁷
156. In both of its Responses, Management emphasizes that Indian law requires PAPs to have “*a valid claim to the land*” before compensation is paid. “*Claims are examined on a case by case basis by the District authorities*” and during 2000 they conducted field camps to authenticate PAP’s claims to GMK land (Ghair Mazurua Khas)

¹⁵⁶ According to the Requesters, Gair Mazurwa (GM) land is vacant land, which means that at the time of the settlement it was not registered under any tenant. A very detailed special register exists for this type of tenure. Gair Mazurwa is subdivided into GM Aam (public land, such as roads, rivers grazing fields – the most important Common Property Resource; and into GM Khas (reserved land, which, in the absence of tenants, is considered government land). Those who take possession de facto, with no settlement patta (title), become sikmi ryots. Those who, on the other hand, formalize the occupation with the local revenue office and start paying rent are called kaimi ryots with full settlement rights. Bhudan Land (or Bhumidan) is land given to landless people either under the Bhudan Movement or under the government “*land to landless*” program. People are given pattas, take possession and pay taxes. There are other categories for which the Requesters informed the Panel no rights are being claimed. See Request for Inspection, *supra* note 5, Attachment 14 para. 2, CASS to World Bank, Responses to Response, dated November 1996

¹⁵⁷ See Supplement to Request, *supra* note 22, para. 14, in Annex 2 of this Report.

land.¹⁵⁸ According to Management, for Parej village, 8.17ha out of 59.5ha of GMK land has been authenticated in favor of 11 PAPs, while 13 have had their claims rejected regarding 8.89ha. Claims regarding the balance of 42.44ha are yet to be settled. For Duru village, authentication of claims regarding 107ha have been completed by the state authorities, but a final settlement is delayed by the transition to the new state Government.¹⁵⁹ In April 2002, Management stated that the compensation amount for recognized claims is calculated in the same manner as for tenancy land.¹⁶⁰

157. Also, in both Responses, Management stresses that the supervision teams have monitored the land authentication process during every mission and have repeatedly requested CCL to make efforts to have the procedure expedited.¹⁶¹ In addition, they have asked CCL and XISS to assist the PAPs in assembling evidence for their claims and to see that the decisions are made in a transparent manner.¹⁶² They add that during the February 2002 supervision mission, Management “*received assurances from CIL and CCL, that they would henceforth assist PAPs claiming rights in GMK land to provide the necessary documentation for authentication review by the state authorities.*”¹⁶³

158. In 1997, the ESRP concluded that the Coal India Ltd. R&R policy was contrary to OD 4.30. They pointed out that paragraph 11 requires a “*written legal document or reference to a record (such as a revenue officer certificate, electoral roll, ration order card or school report)*”¹⁶⁴ as evidence that a person is a legitimate PAP. The ESRP stated that: “[c]learly CIL is bound by State Laws as far as the land rights of PAPs are concerned. However, this requirement fails to acknowledge the rights of PAPs without written proof of land rights, including those PAPs with a claim to traditional land rights and is directly contrary to the requirement of the World Bank Operational Directive, OD 4.30”¹⁶⁵ (emphasis added).

159. The ESRP’s finding has to be examined in relation to the provisions of paragraph 17 of OD 4.30 and paragraphs 15(c) and 17 of OD 4.20 relating to implementation of compensation for customary rights. As noted below, these provisions acknowledge, inter alia, that land tenure rights can be governed by local systems. They also require the issues to be addressed in the earliest stage of project planning and development and in the RAP.

¹⁵⁸ See Management Response 2001, *supra* note 13, para. 67. The Response explains that Ghair Mazurwa Khas (GMK) land was previously held by large landowners (zamindars), but was after independence either transferred to the cultivators or to the state.

¹⁵⁹ *Ibid.*

¹⁶⁰ *Id.*, para. 63.

¹⁶¹ *Ibid.*

¹⁶² See Project Files, February 28, to March 15, 2000 mission, para. 47. The facilitating NGO, XISS has assisted two EPAP brothers from Borwa Tola in obtaining a “*succession certificate*” to prove that they were rightful inheritors of their father’s claim to GMK land.

¹⁶³ Management Comments 2002, *supra* note 34, para. 50-51, in Annex 3 of this Report.

¹⁶⁴ ESRP, *supra* note 91, 1997 Report, p.6

¹⁶⁵ *Ibid.*

160. **Paragraph 17 of OD 4.30** requires that: “*Resettlement plans should review the main land tenure and transfer systems, including common property and non title-based usufruct systems governed by locally recognized land allocation mechanisms. The objective is to treat customary and formal rights as equally as possible in devising compensation rules and procedures. The plan should address the issues raised by the different tenure systems found in a project area, including (a) the compensation eligibility of land-dependent populations;... Plans should contain provisions for conducting land surveys and regularizing land tenure in the earliest stages of project development. Planning should also anticipate the approximate time needed to acquire and transfer land*” (emphasis added).
161. **Paragraph 15(c) of OD 4.20** concerns land tenure. It requires that “*the Bank should offer to advise and assist the borrower in establishing legal recognition of the customary or traditional land -tenure systems of indigenous peoples ... These steps should be taken before the initiation of other planning steps that may be contingent on recognized land titles.*”
162. **Paragraph 17 of OD 4.20** states that the above should be done during the preparation period. “*In a project that involves the land rights of indigenous peoples, the Bank should work with the borrower to clarify the steps needed for putting land tenure on a regular footing as early as possible, since land disputes frequently lead to delays in executing measures that are contingent on proper land titles (see para. 15(c)).*”
163. In reviewing the files available to it, the Panel concluded that, during Project Preparation, Management did not raise any question about these provisions. Staff confirmed this. When the Legal Department suggested that a “*sworn affidavit*” should be included as the type of evidence required by paragraph 11 of Coal India Ltd. R&R policy, the suggestion was not taken up by Management.¹⁶⁶ However, in the final review before appraisal, the Bank sociologist did point out that “*the policy contains a number of definitional problems such as ‘traditional rights of tribals’ and lacks clarity in implementation procedures.*”¹⁶⁷
164. RAPs for individual mine sites were supposed to fill the gaps in the Coal India Ltd. R&R policy and ensure compliance with OD 4.30. Both paragraph 17 of OD 4.30 and paragraph 15(c) of OD 4.20 require that indigenous land rights be dealt with at the earliest stages of project preparation.
165. The 1994 Parej East Baseline Survey provides “... *a word of caution. Even if the Government of India considers the families having 0.50 acres of land as landless families, this concept is not followed here. It is a matter of fact that even if one family has less than 0.5 acres of land, that family will be eligible for compensation*

¹⁶⁶ Project Files, May 4, 1994.

¹⁶⁷ Project Files, January 21, 1995, para. 10.

*and hence the family is not landless.*¹⁶⁸ They then reported that, “... 51.36% had houses either in *gair mazura* [Government or GMK] land, or in land of their relatives for which they had no legal evidence.”¹⁶⁹ However, neither the Baseline Survey nor the RAP indicated how many of these PAFs were tribals cultivating land under traditional rights.

166. The Parej East RAP is silent in terms of data and process for tribal’s cultivation land under traditional rights. It simply does not say what a project affected tribal cultivating land under customary right is supposed to do, or when, or how he is supposed to do it. In addition, while the RAP describes the need for “authentication” of GMK land, the Panel finds it difficult to understand how this can be achieved when neither the Baseline Survey, nor the 1994 RAP (nor subsequent annual updates of the RAP, nor the later database) provided the CCL with any list of tribals cultivating, or claiming to cultivate, land under customary rights. It is not possible to discern who owns what types of land, or to isolate those who “cultivate land under traditional rights.”¹⁷⁰
167. In late 1994, the XISS, the same NGO that had prepared the Baseline Survey, conducted a study of mining impacts in the West Bokara area. In this study they refer to the RAP for Parej East, and note that “in the matter of compensation we found the policy guidelines are reasonable at least on paper, but many problems arise at the time of implementation.”¹⁷¹ This Report continues by saying that: “[a]s pointed out in our Report on Parej [referring to their Baseline Study] persons who do not have any papers (*patta*) of ownership are not entitled to compensation because they are cultivating *Ghair Majurwa* land. They have been cultivating the land for two or three generations. Not to give them compensation is certainly a great injustice”¹⁷² (emphasis added). This XISS study re-enforced the extent of the injustice experienced, and the harm suffered by many of the tribals in West Bokara area by pointing out that many of them had been involved in relocation for the nearby TISCO mine and had been waiting for payment since 1986 when TISCO acquired the site for that mine.¹⁷³
168. Prior to 1995, Bank files insist that the tribals who were to be relocated had been taken care of in the RAPs in accordance with OD 4.30 and OD 4.20.¹⁷⁴ However,

¹⁶⁸ Baseline Survey, *supra* note 59, para. 4.9.2.

¹⁶⁹ *Id.*, para. 0.18. The Panel notes that for those who have houses whose homestead was in *Gair Mazura* land the question of needing evidence would not apply because they were, in any case entitled to a plot in the resettlement site, or later to an alternative Rs50,000 cash compensation.

¹⁷⁰ While the later CSESMP-CIL database (2001) designates by Tribe/Caste and ROR/UCR land, nobody is listed under UCR. Staff informed the Panel that this is because work on inserting data in all field is not yet complete.

¹⁷¹ XISS Report, *supra* note 25, para. 4.2.

¹⁷² *Ibid.*

¹⁷³ *Id.*, para. 4.2.

¹⁷⁴ December 1994, Pre-Appraisal Mission of the Coal Sector Rehabilitation Project, para. 20 states that “[t]he mission has reviewed the requirement for a Tribal Development Plan, according to OD 4.20. The mission found that tribal issues have been satisfactorily addressed in the Rehabilitation Action Plans that have been prepared for this project.”

there is no mention of this in either the later CSESMP Sectoral EIA or the Staff Appraisal Report (SAR).¹⁷⁵ Management cleared the Parej East RAP at the end of 1994 in agreement¹⁷⁶ with the pre-appraisal mission that reported “[t]he mission has come to the conclusion that the actions required by the spirit and intent of OD 4.20 are adequately met by the Rehabilitation Action Plans.”¹⁷⁷

169. As far as the Panel can see from the records, this issue would not have surfaced had CASS not raised it in 1996. At this point in time Management was not responding to local NGOs, so a number of outside NGOs, including the Swiss Berne Declaration, UK Minewatch, and others, decided to support CASS’s claim and presented it to the Bank. The Berne Declaration stated that “Coal India should ensure that the concerned government officials hold camp courts in the villages and finalize respective certifications.¹⁷⁸ It would be the responsibility of Coal India to get the required certification without harassment to PAPs. (These actions are required in order to comply with OD 4.20, OD 4.30 and Coal India’s Displacement Policy)”¹⁷⁹ (emphasis added). Management responded that “Coal India cannot ensure that the Government hold camp courts. This is not required nor has it been agreed to by Coal India or the Government. There is a formal appeals process, which any people who believe that they were neglected can follow. This appeals process is on-going and no guarantee is made that it will be completed before negotiations for the Coal Sector Rehabilitation Project are held.”¹⁸⁰ On the other hand the files show that the Bank sociologist felt that Coal India Ltd. should be held responsible.¹⁸¹
170. In June 1997, after the NGOs had raised the issue a number of times,¹⁸² the Bank team, under a new Task Leader, admitted that although Coal India Ltd. R&R policy stipulates that tribals cultivating land under customary tenure arrangements are entitled to full compensation under package A, Coal India Ltd. admits that this is at

¹⁷⁵ While the Coal India Ltd. Resettlement and Rehabilitation Policy with the correct text is included in the SAR, the Panel notes an error in the Table (at Box 2.3.1) that shows the evolution of Coal India Ltd.’s R&R policy, from 1991 to 1994, lists “Tribals cultivating land under traditional rights” as a separate category entitled only to be “rehabilitated through self-employment schemes and jobs with contractors” instead of as landowners entitled to the same compensation and rehabilitation options as titled owners.

¹⁷⁶ Project Files, November 17, 1994, para. 10-11. “ASTHR [Asia Technical Human Resources] finds that concerns and spirit of OD 4.20 will be sufficiently addressed in the RAPs ... The issues that need to be addressed in the present project is that of assisting mixed communities (villages) in the transition process.” See also Project Files, January 21, 1995, para. 17.

¹⁷⁷ December 1994, Pre-Appraisal Mission of the Coal Sector Rehabilitation Project, paras. 20-21.

¹⁷⁸ The Panel notes that the District Authorities conducted a land authentication and compensation camp in Parej from January 17 to 29, 2000. See Management Response 2001, *supra* note 13, para. 67.

¹⁷⁹ Request for Inspection, *supra* note 6, Attachment 12 para. (A)2, The Berne Declaration to World Bank, NGO benchmarks for the World Bank’s India Coal Sector Projects, dated September 13, 1996.

¹⁸⁰ Management Draft Response to Berne Declaration letter dated September 1996, October 18, 1996, para. 2-3.

¹⁸¹ Project Files, April 10, 1997.

¹⁸² See Request for Inspection, *supra* note 6, Attachment 20 para. 2, The Berne Declaration, Outstanding Issues, dated February 7, 1997; see also Office Memo May 7, 1997, Acting Secretary to Board of Executive Directors, Management Response to The Berne Declaration, Outstanding Issues, February 7, 1997. It is of interest to mention here that the Bank sociologist disagreed on the approach. He believed Coal India Ltd. could do much more to legalize people with traditional rights prior to award of compensation.

present not possible because there is no legal framework to accommodate this. The R&R policy is in this respect ineffectual unless the required legal provisions are created. To achieve this Coal India Ltd. accepts an additional cross-conditionality for the CSR¹⁸³ (emphasis added). The Agreed Minutes of the CSR Negotiations held in July 1997 state that: “*The Bank team expressed its concern that compensation for land held under customary tenure has not been uniformly provided by all Coal India’s subsidiaries. The Indian delegation assured that these issues will be addressed to the satisfaction of the Bank.*”¹⁸⁴ In a Supplemental Letter to the CSR Loan Agreement, signed in March 1998, “*CIL Obligations Relating to Resettlement Action Plans*” was attached. The “*Agreed Actions*” for Parej East lists the need for a “*Record of Right*” for all land held under tenure forms such as Ghai Mazurwa Aam, Ghai Mazurwa Khas, Bhudan and Bahamian and states that there were a total of eligible 382 EPAPs in Parej East.¹⁸⁵ The Letter shows that for there were a total of 3,350 EPAPs at eight mines in need of a “*Record of Right*” and figures were to be provided for the other six mines.

171. Bank files reveal that, following the July 1997 CSR Negotiations, every Bank supervision mission raised the matter of compensation to tribals “*cultivating land under traditional rights.*” Nevertheless, in June 1998 the issue was still outstanding with Management reporting that, according to Coal India Ltd., “*since such lands would in effect be paid for twice (first to the concerned government authority and then to the PAPs) compensation to PAPs can only be considered based on a review of the merits of each case.*”¹⁸⁶ At this point, the June 1998 supervision mission recommended that Coal India Ltd. undertake a study of the legal framework in Bihar, Orissa, Madhya Pradesh and Uttar Pradesh.
172. In September 1998, a year later, there appeared to have been no action and CASS had to inform the Bank that in Parej East: “[u]ntil this land is recognized the PAPs refuse to shift.”¹⁸⁷ The Task Leader told CASS that Coal India Ltd. had informed him that the authorities had tried to visit the area but the villagers had not cooperated. He suggested that CASS may be able to help in facilitating the process by impressing on the villagers the need for cooperation “*if and when they attempt to verify the claims once again.*”¹⁸⁸

¹⁸³ July 1997 Aide Memoire, para. 10.

¹⁸⁴ Project Files, Agreed Minutes of Negotiations for India Coal Sector Rehabilitation Project, July 23, 1997, para. 39.

¹⁸⁵ See Supplemental Letter (d) to CSR Loan Agreement, attached sheet for Parej East, dated March 19, 1998.

¹⁸⁶ Project Files, May 14, to June 5, 1998 mission, para. 23.

¹⁸⁷ Request for Inspection, *supra* note 6, Attachment 43, CASS to Christensen, dated September 1, 1998; Attachment 44 para. 2, CASS to Christensen, December 12, 1998; Attachment 45 para. 2, World Bank to CASS, February 14, 1999; see Project Files, February 12 to March 5, 1999 mission, para. 59; Attachment 47 para. 1, World Bank to CASS, September 8, 1999; Attachment 49 para. 1, CASS to Deputy Commissioner Hazaribag, December 17, 1999.

¹⁸⁸ Request for Inspection, *supra* note 6, Attachment 47 para. 1, World Bank to CASS, September 8, 1999.

173. Management's Mid-Term review reported that Indian law only provides compensation to persons who have been declared "*interested persons*" with a claim to the land recognized by the State authorities. It states that it "*appears that the procedures used to identify 'interested persons' do not ensure that all those cultivating land under customary arrangements are compensated.*" Thus, in Parej East, by February 1999 "*about 17 PAPs*" with a recognized claim had received compensation. CASS gave CCL a list of another 43 PAPs cultivating GMK land in February 1999. "*Others who also cultivate GMK land have not had their claim for compensation recognized by the District Authorities.*"¹⁸⁹ The CCL (Project Officer) agreed to intercede immediately "*with the District Collector for review of claims for status as 'interested persons' for users of GMK land in Parej East.*"¹⁹⁰
174. **The above account in Parej East of traditional land rights reveals a serious failure to comply with the relevant Bank policy provisions. In proceeding with the CSESMP, Management expected (and Coal India Ltd. agreed) that the tribals would be treated in accordance with Bank ODs 4.30 and 4.20. Yet, it appears that the laws of the State of Bihar precluded such treatment without documentation. The Panel finds it difficult to understand how, at the time of preparation, Management could be unaware of this when the Bank had been involved in resettlement projects in India for some years. Furthermore, based on the foregoing, it seems clear that, during preparation, Management did not raise any questions about the possible lack of legal recognition or the process required to ensure compensation for tribals cultivating traditional land without title or documentation.**
175. **The Parej East RAP does not identify tribals as claiming land rights; it does not provide any details of the process required under Bihar law; and it does not include a time-bound schedule for authenticating GMK land rights that were not already settled. There is no mention of camp courts or of what the PAPs would need to do in order to establish their rights. All this should have been done because Management accepted the Coal India Ltd. R&R policy as a working framework on the understanding that it would review mine specific RAPs for compliance with OD 4.30. These now recognized flaws have resulted in injustice and harm.**
176. Legal recognition of traditional land rights is a serious problem. In Bihar (and now Jharkand) authentication by state authorities is required. During its field visit, the Panel was told that this process was and is not on the District Administration's priority list, so it continues to be delayed, with the resulting serious consequences for the PAPs. Nearly eight years after adoption of the Coal India Ltd. policy, and the RAP for Parej East, about 150ha out of a total of about 167ha claimed by tribals "*cultivating land under tradition rights*" have not been settled. This is extremely serious, in the Panel's view, and needs immediate action.

¹⁸⁹ March 1999 Aide Memoire, para. 60.

¹⁹⁰ Id., Agreed Actions, p.14.

177. **The Panel finds that Management was not in compliance with paragraph 17 of OD 4.30 and paragraphs 15(c) and 17 of OD 4.20, in connection with the preparation of the Parej East RAP. At the same time, the Panel recognizes that after this flaw was raised by CASS and international NGOs, Management acknowledged the problem. It raised the issue to the level of a cross-conditionality under the CSR loan. And, since then, it has worked with persistence to try to get the matter resolved.**
178. The Panel would observe that OD 4.30 is clear that compensation is supposed to be paid before people are involuntarily displaced. The records indicate that months before December 1999, Management expressed concern that the mine expansion would not be able to proceed as planned in December 1999 since resettlement arrangements were not in place. In June 1999 CCL submitted a “*contingency resettlement plan for 22 PAFs of Borwa Tola.*”¹⁹¹
179. The Panel questioned Management on this and received a response in mid October 2002. The Panel notes that there are two villages in Parej East, Parej and Durukasmir. With respect to Durukasmir village, the Management Response is clear and no PAP’s have yet been relocated. For the village of Parej, the Management Response appears to deal only with one of the hamlets of Parej, namely Borwa Tola. This hamlet no longer exists so clearly every PAP has been relocated. Apparently six tribals from Borwa Tola claimed they were cultivating GMK land. Of these, two claims were rejected. Of the four claims approved two were paid compensation before relocation, one was not paid before relocation due to a bureaucratic error, and one had died but their heirs have not been informed of the claim. This response informs that 18 non-tribal PAPs apparently from Borwa Tola claimed they were also cultivating land under customary rights. This response does not state whether compensation was paid, **before** their relocation, to the seven whose claims were authenticated. Of the 11 whose claims were rejected, Management could not discover the status of the appeal lodged by eight of them, so it would appear that they have relocated before a decision on their appeal. Finally, all three times Management has addressed this question in its response, it mentions that for Parej village a total of 8.17ha out of 59.5ha has been authenticated and that claims regarding the other 42.44ha remain to be settled. None of the answers provide any further information on this, so the Panel does not know how many PAPs are involved, which hamlets of Parej village they are from, and whether or not they have been relocated. **For the above reasons, the Panel notes that Management has failed to provide the Panel with evidence that it has complied with the OD 4.30 with regard to the compensation of PAP's who own land under traditional or customary rights, prior to their relocation.**
180. In February 2000, after the eviction, Management informed CASS, that compensation “*is also being paid to those who hold land under customary rights (GMK). Of five EPAPs three have been approved as eligible for compensation, one is under consideration as an ‘interested party’, and one has been rejected by the*

¹⁹¹ Management Response 2001, *supra* note 13, Annex 3.

*District Collector due to lack of documentation supporting the claim for compensation.*¹⁹² It is not entirely clear to the Panel that these people were from Borwa Tola.

181. At the same time, the March 2000 supervision team spelt out a number of measures that CCL should take to facilitate future relocation after the Borwa Tola problem. Among them, “[a]ll compensation payments should be completed before the relocation takes place. To improve relations with the PAPs, CCL together with the facilitation NGO should assist PAPs to get claims for land under customary tenure (GMK land) processed before the relocation.”¹⁹³
182. The Panel would observe that the 1992 Morse Commission report on the Sardar Sarovar dam dealt with the question of encroachers, including tribal people, holding land under customary rights. The Commission pointed out that “[b]oth states [Madhya Pradesh and Maharashtra] have provided that encroachers who can prove that they were cultivating encroached land prior to a certain date ... will be entitled to have their interests recorded. But these arrangements depend on documented proof which does not often exist.” The Commission estimated that at least 60 percent of tribal displacees in the two states, who were engaged in cultivating land, would not receive adequate land on resettlement. Most would become landless laborers. They concluded that the two States were not in compliance with the Bank’s credit and loan agreements.¹⁹⁴ **In the Panel’s view, during the preparation of the CSESMP, Management and staff should have been aware of this 1992 Morse Commission finding and taken it fully into consideration.**
183. In 1997, as noted earlier, the Environmental and Social Review Panel (ESRP) found that “[t]he poor without such documentary proof lack the knowledge and resources necessary to follow the processes required to prove communal and/or traditional rights. This effectively excluded them from receiving payments on land that may have occupied for years.”¹⁹⁵ “The whole land rights issue needs to be addressed once again.”¹⁹⁶ The latest 2002 supervision mission report indicates that CCL will now help PAPs obtain the necessary documents needed to get their authentication reviewed, but this is too little and much too late to avoid the unnecessary harm that Management recognizes the PAPs have suffered.

¹⁹² Request for Inspection, *supra* note 6, Attachment 52 para. 4, World Bank to CASS, August 2, 2000.

¹⁹³ March 2000 Aide Memoire, para. 48.

¹⁹⁴ Sardar Sarovar, Report of the Independent Panel, 1992, at xvii-xviii.

¹⁹⁵ ESRP, *supra* note 91, 1997 Report, para. 3.6.2.2.

¹⁹⁶ ESRP, *supra* note 73, 2000 Report, p. 25.

Chapter 5

5. Forest Resources

5.1. Access to Forest Products

184. **Paragraph 15(a) of OD 4.20** points out that in an IPDP “[p]articular attention should be given to rights of indigenous peoples to ... have access to natural resources (such as forests ...) vital to their subsistence and reproduction.” It adds that baseline data should include “... inventories of the resources that indigenous people use and technical data on their production systems; ...It is particularly important that baseline studies capture the full range of production and marketing activities in which indigenous people are engaged.”
185. **Paragraph 11 of OD 4.30** recognizes that Socioeconomic Surveys should describe “...information on the full resource base of the affected population, including income derived from informal sector and non-farm activities, and from common property.”
186. The Request claims that “*the basis for the PAPs’ former non-formal economy was income from ... common property resources (CPR).*”¹⁹⁷ However, as a result of the expanded mining, “*common property resources ... have been greatly depleted, and ... are NOT being replaced.*”¹⁹⁸
187. In its Response, Management points out that the depletion of forest resources has been caused by several years of mining in the Parej East area unrelated to Bank funded projects so there has been a decrease in dependence on such resources. Management continues by claiming that the Requester’s assertion “*is not empirically correct*”¹⁹⁹ since according to the Baseline Survey “*there was not a single landless tribal family dependent on forest produce.*”²⁰⁰ In any event, the Response notes, the resettlement site has been chosen in consideration of its vicinity to forest and grazing land. Nearby forest is accessible from both the Pindra and Prem Nagar resettlement site. In its April 2002 Response, Management reports that, in February 2002, the supervision mission discussed the availability of the resources with the PAPs and received positive feedback by the people who stated that they have access to forest land for forest collection.²⁰¹
188. In the Requester’s view, Management’s use of the statement that “*not a single landless tribal family dependent on forest produce*” is a twisted ambiguity. They point out that every tribal family did have a large amount of their subsistence

¹⁹⁷ Request for Inspection, *supra* note 6, para. 4(b).

¹⁹⁸ *Id.*, para. 4(b)(i).

¹⁹⁹ Management Response 2001, *supra* note 13, para. 69.

²⁰⁰ *Ibid.*

²⁰¹ Management Comments 2002, *supra* note 34, para. 54, in Annex 3 of this Report.

income coming from the forest.²⁰² The Requesters do not claim that any family relied exclusively on forest produce or common property resources. Nor do they claim that the tribals' former non-formal economy suddenly disappeared with the CSESMP.

189. In the Panel's view, after examining the Baseline Survey, Management's approach to the issue is misleading. The Baseline Survey shows that there are no tribals who depend exclusively on forest products. But it makes it very clear that most of the population, tribals and non-tribals were dependent, in varying degrees, on forest products for a portion of their income or for household use. In fact, the Baseline Survey concludes that forest produce comprises, on the average, 9.75 percent of PAF income. A nearly 10 percent loss in the food supply of poor and vulnerable families can be a matter of survival.²⁰³
190. CASS asserts that the Baseline Survey "*fails to mention the right of commons or the common property resources which are a vital source of income for the villagers and for which no compensation is being given.*"²⁰⁴ They claim that the proposed rehabilitation site will obviously have none of the forest products previously used; nor are the villagers being compensated for their loss.²⁰⁵
191. Management disagrees with the Requesters and refers to the census of PAPs which "*does list 'forest collection' and 'forest products' as a source of income for those EPAPs, who depended on this for part of their livelihood.*"²⁰⁶
192. The Panel notes that it was clearly incorrect of CASS to assert that the Baseline Survey fails to "*mention*" common property resources. It does so very extensively. However, the Panel notes that there is no individual income data in the Baseline Survey.
193. According to the Baseline Survey, dependence on forest products has diminished because of the impact of mining in the area. The number of family members whose main occupation is collection of forest products is 0.95 percent, and cultivation is 13.25 percent, whereas 51.48 percent are non-agricultural laborers and 25.87

²⁰² CASS to Inspection Panel, December 10, 2001.

²⁰³ Wage labor constituted on average only 29 percent of their income. Baseline Survey, *supra* note 57, para. 4.6.2.

²⁰⁴ In the Supplement to Request, *supra* note 22, para. 13(a), Annex 2 of this Report, the Requesters state that: "*Village common property resources include Mahua trees whose flowers, and oil from the fruits are sold and approximately Rs. 2000/- per annum is earned by the villagers from the trees. Similarly there are large numbers of Kendu trees which has an edible fruit and whose leaves are used for Beedi rolling. Similarly there are a number of medicinal plants and herbs which have been used since generations for medical purposes by the residents. Khajur trees are also plentiful which are used for making brooms, brushes and Chatais.*"

²⁰⁵ *Ibid.*

²⁰⁶ Management Comments 2002, *supra* note 34, para. 52, in Annex 3 of this Report. See also Indigenous People Development Plan for Parej East Open Cast Project, dated November 1995 (hereinafter 'IPDP'), p. 7.

percent have jobs.²⁰⁷ However, the subsidiary occupation of 345 or 71.13 percent of the PAFs was collection of forest produce and it provided the third largest source of income.²⁰⁸ Cultivation was the next largest subsidiary occupation engaging a total of 90 or 18.56 percent and providing about 6.41 percent of income.²⁰⁹



Picture 3: Use of forest resources

194. It is thus clearly evident that collection of forest products is the major subsidiary occupation of the vast majority of the PAFs. The Baseline Survey, however, only provides averages. During its visits to the area, the Panel observed that both tribal and non-tribal communities depend on the collection of forest produce to varying degrees. This was also true within a community. In addition, many tribals own Mahua trees whose fruit is eaten as well as brewed for liquor.
195. The Baseline Survey indicates a loss of opportunities to access forest products used for basic household needs. *“Around 43.38% of PAFs reported the likely loss of opportunity of procuring various kinds of forest products, such as timber, fruit, kendu leaf, herbal medicine, shoots, flower for food and leafy vegetation. 50.19% of the PAFs apprehended their loss of the opportunity to collect firewood as the maximum of all. 85.6% of the PAFs revealed that [they] will lose the availability of mahua [oil seed], used by them in various ways domestically.”*²¹⁰
- 196. The Panel finds that the Parej East Baseline Survey provides information on the resource base of the affected population, including income derived from forest resources as required by paragraph 11(b) the OD 4.30.**

²⁰⁷ Baseline Survey, *supra* note 59, table 4.11 p. 52.

²⁰⁸ Id., table 4.16 p. 57. Other sources were Business 5.39 percent, Live Stock 2.97 percent, Farm and Consumer asset 1.20 percent, Others 1.03 percent.

²⁰⁹ Id., table 4.12 p. 53; and table 4.16 p. 57.

²¹⁰ Id., para. 5.3.1.

5.2. Compensation for Loss of Access to Forest Products

197. **Paragraph 15 of OD 4.30 recognizes that** “*Some types of loss, such as ... (c) fishing, grazing, or forest areas, cannot easily be evaluated or compensated for in monetary terms. Attempts must therefore be made to establish access to equivalent and culturally acceptable resources and earning opportunities*” (emphasis added).
198. Under the CSESMP, compensation for loss of common property resources is to be provided by choosing a resettlement site with access to similar resources. The RAP notes that “*a good forest is contiguous to the site. Hence, the families who were dependent on forest in their living place can derive the same facilities.*”²¹¹
199. The RAP, however, fails to provide any details about how the forest beside the resettlement site would adequately compensate PAPs for their loss of essential forest products, both in terms of their value to the household, or their income producing value. Over 250 families were expected to move there. There is no measure of the acreage of the forest beside the site, no inventory of the products it contains, and no indication of whether or not the forest is degraded, and, if so, to what extent.²¹²
200. Although the Panel could find no record of it in the official documents, it is interesting to note that Bank staff told the Requesters²¹³ that during CSR negotiation it was agreed that a “*methodology will be developed to assess the value of common property resources in order to provide compensation to tribal PAPs in cases where such resources are lost either due to mine expansion or because the utilization of the resources cannot continue due to the location of the resettlement site...*”²¹⁴
201. Paragraphs 7-10 of OD 4.30 spell out the importance of the relationship between resettlers and the host population. Describing the host population as “*small*” and in a cluster of scattered homes on the eastern side, the RAP provides no indication of the number of homesteads or families that exist there; no indication of whether they are Scheduled Caste, Scheduled Tribes or other caste designation. It asserts that the relocation of PAPs will not affect the economic base of the host community. It provides no evidence that the host community was ready to welcome the proposed settlement of about 339 houses.²¹⁵ It provides no indication that the host community uses the forest resources and to what extent. It does not say whether the host community has been consulted, or if it has, whether it is prepared to share the forest. It does not even indicate that the host community is aware of the fact that it would be asked to share the forest with a huge influx of outsiders.

²¹¹ RAP, *supra* note 74, para. 3.7.3.

²¹² *Id.*, para. 7.3.

²¹³ CASS to Wolfensohn, September 7, 1997.

²¹⁴ Management to CASS, draft letter, September 9, 1997.

²¹⁵ See also Request for Inspection, *supra* note 6, Attachment 6 para. 5.6 and 5.8, CASS/JJM to World Bank: Report on the East Parej OCP, dated April 20, 1996.

202. During its visit to the resettlement site at Prem Nagar, where there is no host community, the Panel found that the PAPs are using the adjacent forest for some purposes but that their right to use it is disputed by the Forest Department, which owns both the site and the forest. During its visit to Pindra, the Panel found that the around 20 families of PAPs who were relocated there have access to the adjacent forest, apparently without opposition from the host community.
203. In its Response, Management points out that PAFs now have a choice of taking Rs50,000 and are no longer choosing to relocate at the Pindra resettlement site, in which case CCL would not be able to facilitate access to common property resources. But, to the extent *“that PAFs choose to settle in the villages that are targeted for IPDP activities, they will be able to benefit from the community development assistance extended by CCL.”*²¹⁶
204. **As provided for in paragraph 15(c) of OD 4.30 the RAP states that the Pindra resettlement site will provide equivalent access to the forest, but it fails to support this statement with any details about the adjacent forest including whether the forest will support the same income earning opportunities for the 227 families originally expected to move there, or whether the host community is prepared to share the resource. The Panel found no evidence to indicate that during appraisal Management ensured that access would be available or that access to the forest beside Pindra would provide PAPs who moved there with equivalent compensation for loss of their access to forest products. Because of this, the Panel finds that Management was not in compliance with paragraph 15(c) of OD 4.30 during Preparation.**

²¹⁶ Management Response 2001, *supra* note 13, para. 70.

Chapter 6

6. Income Restoration

205. Paragraph 3 of OD 4.30 states that the objective of the policy on Involuntary Resettlement is to ensure that “*the population displaced by a project receives benefits from it.*” With respect to income restoration, paragraph 3(b) (iii) states that the displaced people must be “*assisted in improving their former living standards, income earning capacity and production levels, or at least in restoring them*” and adds that “*Particular attention should be paid to the needs of the poorest groups to be resettled.*”
206. Before the CSESMP was approved, the Requesters sent repeated complaints to Management about the proposed income restoration scheme for Parej East which they considered fundamentally flawed in its design. In their Request for Inspection, they now assert that income restoration has failed, and that, as a result, the CSESMP has “*only impoverished people.*”²¹⁷ CASS claims that the project “*set out to do what is impossible*”²¹⁸ so that “*three years after displacement the people of Turi Tola and Borwa Tola have not regained their former standard of living ...*”²¹⁹
207. In its Response, Management reports that income levels were analyzed for 337 of the 625 EPAPs entitled to income restoration. Income data was available from both the 1997 census and either the June 2000 or April 2001 census. “*Of those 337 EPAPs, 265 or 79% have reported that they have either maintained or increased their incomes, during the project period, after adjusting for inflation.*”²²⁰ Management acknowledges that “[a]dditionally, 11% of the EPAPs have reported a decrease in income while 10% have reported incomes that have not kept pace with inflation.”²²¹ The Response does not indicate the income level brackets of the 21 percent of the 337 EPAPs surveyed who have seen a decline in their standard of living.²²² In its April 2002 Response, Management also gives figures and provides charts showing an improvement in inflation-adjusted, monthly-average, individual

²¹⁷ Request for Inspection, *supra* note 6, para. 4(b).

²¹⁸ CASS to Inspection Panel, December 23, 2001.

²¹⁹ See Supplement to Request, *supra* note 22, p. 4, in Annex 2 of this Report.

²²⁰ Management Response 2001, *supra* note 13, para. 87.

²²¹ *Ibid.*

²²² Management Comments 2002, *supra* note 34, para. 10, in Annex 3 of this Report. Management claims that the incomes of only 16 percent of EPAPs have decreased: “*Analysis of inflation adjusted income data for Parej East from the April 2001 census, shows that for the 236 EPAPs (out of the total caseload of 480 EPAPs), who had two or more data points from which their incomes could be compared, 64% have increased their incomes, 20% have maintained their pre-project incomes, while 16% have experienced a decrease in their reported incomes. Among the 79 EPAPs from the tribal population (out of a total of 152), who had two or more data points from which their incomes could be compared, 58% have increased their reported incomes, 25% have maintained their pre-project incomes, while 16% have experienced a decrease in their reported incomes.*”

income from 1997 to 2001, as well as the household incomes of EPAPs in Parej East from 1994 through 2001.²²³

208. The Requesters also submitted a list of EPAPs from the four villages of Parej who, they claim, are entitled to rehabilitation assistance that they were not receiving. It shows the EPAPs' current condition/status/sources of income.²²⁴ In its April 2002 Response, Management provided a detailed analysis of the list. It compares, where possible, the 1997-survey reported incomes with the reported 2000 or 2001-survey incomes.²²⁵ In light of this, Management contends that "*of the 167 persons on the list submitted by CASS, only 40 could actually be entitled to economic rehabilitation assistance under the CSESMP.*"²²⁶ The Panel accepts the clarification Management provides to the Requesters' claims about the incomes of the 167 persons. The details are available in Annex 3 to the 2002 Management Response attached as Annex 3 to this Report. The Panel also notes that, as discussed in the previous chapter, it will be difficult to assess the increase or decrease in the incomes of EPAPs who choose not to relocate to the resettlement site, since the 1994 and 1997 income data bases do not record individual household informal income amounts.
209. The Requesters maintain that "*in spite of the sincere and best efforts of WB persons, in spite of the sincere and best efforts of CCL persons, in spite of most of the progress bench-marks being achieved, in spite of any number of inspections, consultants and experts, the fact is that the PAPs have been now deprived of their former economic survival base, and for an alarming large number of them, this has NOT been replaced.*"²²⁷ **In the Panel's view, this is largely correct.**
210. **The Bank's objective in OD 4.30 on Involuntary Resettlement is to ensure that people, who are displaced, benefit from the project. Displaced people must be assisted to improve or at least restore their standard of living. In spite of significant efforts on the part of various Bank officials and others involved during implementation, these objectives have not been achieved in Parej East and, as a result, PAPs have been harmed and continue to suffer harm.**
211. **While it is absolutely essential for the Bank to support these difficult challenges, the Panel would caution that unless they are matched by time, the early planning required by OD 4.30, the resources and realism needed to achieve them, the poorest and most vulnerable of the people affected by the project may end up carrying a disproportionately heavy burden.**

²²³ Id., para. 10.

²²⁴ See Annex 3 of this Report.

²²⁵ Management Comments 2002, *supra* note 34, para. 10, in Annex 3 of this Report.

²²⁶ Ibid. Management claims that 90 people on CASS's list are children or were under the age of 18 at the cut off date in 1997; 24 of the remaining 77 have relocated elsewhere, as indicated by CASS itself; two have died and 11 have either a pension or a job in the mines. After applying the criteria of the R&R policy, 40 people, out of 167, are left.

²²⁷ CASS to Inspection Panel, December 23, 2001.

212. **In light of the above, the Panel finds that, as Management itself recognizes, it is not in compliance with paragraphs 3(b)(iii) of OD 4.30 since, according to the April 2002 Management Response, the income of at least 21 percent of EPAPs in the Parej East subproject had not been improved, still less, restored.**

6.1. RAP Entitlements in Parej East

213. Paragraph 16 of OD 4.30 notes that “the resettlement plan must include land allocation or culturally acceptable alternative income-earning strategies to protect the livelihood of these people.”

214. Prior to 1993, Coal India Ltd. provided mine jobs, in addition to monetary compensation for land loss. With the phasing out of Government support during the early nineties, Coal India Ltd. was unable to continue this practice. Moreover, the objective of the CSRP, the Bank’s parallel investment project, was to reduce employment and increase mine profitability. It is clear from the project files that Management recognized that employment in the mine could no longer be an income restoration option.²²⁸

215. In light of this, Management determined that a new Coal India Ltd. policy would have to provide a wider range of options for the PAPs than employment in the mine.²²⁹ It identified (a) an option for the purchase of equivalent land using the compensation they received for land; (b) assistance to establish non-farm self employment through the provision of infrastructure, petty contracts or the formation of co-operatives; and (c) for PAPs with less than two acres, a rehabilitation assistance grant against productive assets or a rehabilitation allowance. In addition, Coal India Ltd. accepted the requirement of Bank OD 4.30 that sharecroppers, land lessees and tenants must be entitled to resettlement packages. Coal India Ltd. R&R policy entitled them either to assistance in establishing self-employment, or to help in obtaining jobs with contractors.²³⁰ Employment in the mine would only be given to those who lost land, if this was feasible for the subsidiary.²³¹ And for the landless, jobs could be given on a preferential basis when outside recruitment became necessary.²³²

216. The options CCL offered in the Parej East RAP are identical to those provided in the Coal India Ltd. R&R policy. But CCL spells out the size of land holding that qualifies those who lose land for a job in the mine.²³³

²²⁸ Project Files, April 28, 1994, and Project Files, December 16, 1993.

²²⁹ Project Files, April 28, 1994.

²³⁰ CSESMP SAR, *supra* note 2, Annex 2.3, Coal India Ltd.’s Resettlement and Rehabilitation Policy, para. 11.

²³¹ *Ibid.*

²³² *Id.*, para. 17.

²³³ For every three acres of non-irrigated land or two acres of irrigated land owned, a PAP who had graduated from school is offered one job. For those who have not graduated from school, one job for every two acres of land is offered. However, a number of families with smaller land holdings are entitled to combine their holdings and nominate one person for a job. RAP, *supra* note 74, para. 1.3.2.

217. The 1994 Baseline Survey for Parej East recorded the future income restoration preferences of the 514 EPAPs from the 257 families to be displaced.²³⁴ The RAP repeats²³⁵ the PAPs stated preferences and records that 223 people chose “*service*,” 117 opted for the “*land for land*” package, and the rest expressed a preference for either self-employment or continuing their former occupation (animal husbandry, business, cottage industry).
218. The Requesters and international NGOs who supported them contended that the Parej East RAP contained fundamental flaws. They pointed out that the PAPs expected, but were not receiving, jobs in the mine; there was no viable land-for-land option; no proper income base was established, as there is no record of the informal economy; non-farm based self-employment schemes were not based on a market survey; it was unrealistic to expect PAPs in Parej East to adapt to the concept and culture of non-farm self employment in the short space of five years; there was no plan for income restoration to be completed before relocation; there was no assistance to PAPs to face the transition period; and the subsistence allowance was inadequate. Each of these is addressed below.

6.1.1. Jobs in the Mine

219. Paragraph 30 of OD 4.30 requires that the Bank appraisal mission must “*ascertain ... the feasibility of the implementation arrangements*” in the RAP.
220. The Requesters claim that CCL’s employment of PAPs in the Parej East mine “*has by company policy been kept minimal.*”²³⁶ They assert that the PAPs agreed to shift against the promise of jobs in the mine.
221. In its Response, Management asserts that “[t]he NGOs conducted an extensive house to house census ...[to] receive input on each individual’s preferred means of economic rehabilitation if jobs in the coal mines were not available”²³⁷ (emphasis added).
222. The Panel notes that there is nothing in the records that it has seen to show that the EPAPs in Parej East were asked to do this. Nor is there anything to show that they were informed that it would not be possible for them to obtain a job without meeting the minimum land holding size.²³⁸

²³⁴ Baseline Survey, *supra* note 59, para. 6.3, and, para. 6.4.2.

²³⁵ See RAP, *supra* note 74, para. 3.5.

²³⁶ Request for Inspection, *supra* note 6, para. 4(b)(ii).

²³⁷ Management Response 2001, *supra* note 13, para. 35.

²³⁸ RAP, *supra* note 74, para. 3.4.5(a). The RAP states that “[a]s per present land schedule only 15 persons qualify for the job in CCL.” See para. 3.4.5(a). This was particularly important in Parej East since all tribals owned some amount of land because local laws did not allow them to transfer it to non-tribals. Therefore as the Baseline Survey notes all PAFs were landowners except two (who were not tribal).

223. The evidence is clear that in 1994 nearly half the EPAPs wanted and expected jobs in the mine. The Panel is surprised to observe that, in 1994, the PAPs were allowed to express a preference for a job in CCL, regardless of the size of their land holding, considering that, during Project Preparation, Management itself made the point that CCL was the only subsidiary that was “unlikely to be able to offer any jobs to affected people.”²³⁹ It is clear that Management failed to notice that 223 EPAPs in Parej East wanted a job in the mine, while the RAP stated clearly that only 15 of them qualified for one.²⁴⁰
224. Management also failed to notice that the PAPs who wanted jobs expressed no alternative if a job was not available. The Panel believes that if Parej East had been a stand-alone Bank project, instead of one of fourteen subprojects, the Bank appraisal review of the RAPs would have picked up this very misleading message being given to the PAPs.
225. Only in 1997 when the Turi Tola PAPs were resisting their relocation, did the Bank supervision team note the discrepancy between what the PAPs expected and what was actually available. They reported that “*there seems to have been problems in the past, in the sense that the previous mine manager had given PAPs promises of jobs, that were not available*”²⁴¹ (emphasis added).
226. Only during the updated census of PAPs, carried out in 1997, were the majority of Parej East PAPs presented with the fact that they would not get a mine job, and must instead choose a self-employment income restoration scheme.²⁴²
227. **In the Panel’s view, it is quite understandable that PAPs who opted for jobs in June 1994 should naturally expect to receive those jobs. Nor is it surprising that those who owned less than two acres continued to demand and expect jobs for land. It must have been a shock for them to discover otherwise when finally presented with the reality of their situation in early 1997. The Panel finds that Management was not in compliance with paragraph 30(e) of OD 4.30 during preparation and appraisal of the Parej East RAP.**

6.1.2. Land for Land

228. Paragraph 4 of OD 4.30 state that “Preference should be given to land-based resettlement strategies for people displaced from agricultural settings.”

²³⁹ See March 1994 Aide Memoire, para. 5.

²⁴⁰ The 15 land-owing PAPs who qualified in 1994 received jobs in the mine. In its Response, the Management states that that another nine PAPs, who had sufficient land to qualify, have received jobs.

²⁴¹ Project Files, April 10, 1997.

²⁴² The 1998 Annual RAP, para. 2, states that seven EPAPs opted for training in driving cars and eight for basket making. The Quarterly Consultant Report for period ending March 1998, reports that 51 trainees had been identified and training programs arranged for drivers and tailors. To date, 31 EPAPs had received training.

229. The Requesters contend that “*whereas WB OD 4.30 says ‘The Bank encourages land for land approaches’, this land replacement option has not been pursued.*” In its Response, the Management points out that the Coal India Ltd. R&R policy option consists of an offer from the subsidiary to assist PAPs in identifying and purchasing land. According to the Management “*the PAPs were informed of this option when the R&R Policy was issued in April 1994, but CCL has not received requests for such assistance.*”²⁴³
230. The Parej East RAP states that CCL will offer assistance to PAPs, “*wherever possible,*” to purchase land on a willing buyer – willing seller basis “*within a limited geographic area and specified time period,*” and it stipulates that the “*land and area should provide better or at least the same income that the PAPs were deriving from their original land.*”²⁴⁴ It is clear, as Management states, that the PAPs were informed of this option. But it is not clear why Management states that CCL received no requests for such assistance. The Parej East RAP states that, in 1994 117 PAPs opted for assistance in identifying and purchasing land because they wished to continue their traditional occupation as farmers, and confirms that 115 PAPs qualified for this rehabilitation option.²⁴⁵



Picture 4: Mine expansion encroaches on farm land.

231. The ESRP visited some mines, including the CCL mines, in 1997. They noted that parts of the Coal India Ltd. policy were a source of much discontent and confusion.²⁴⁶ They observed that, contrary to Bank policy, “*this [land for land] option has never been offered to PAPs in any of the Subsidiaries visited. Partly as a*

²⁴³ Management Comments 2002, *supra* note 34, para. 19, in Annex 3 of this Report.

²⁴⁴ RAP, *supra* note 74, para. 3.4.5(b).

²⁴⁵ *Ibid.* See also Baseline Survey, *supra* note 59, para. 6.3(2). Repeating the Baseline Survey analysis the RAP stated that in Parej village, 27 out of 32 families wanted land along with irrigation facilities and inputs with only five satisfied with land alone. In Durukasmar village, 29 out of 51 were expecting land along with irrigation facilities. A total of 83 families opted for land for land.

²⁴⁶ ESRP, 1997 Report, *supra* note 91, para. 12.

*result, the question of the adequacy of compensation paid for land is an important source of discontent with landowners.*²⁴⁷

232. During interviews, Bank staff, as well as Coal India Ltd. and CCL officials, told the Panel that no nearby replacement land was available at Parej East. However, in its Response, Management states that “*a total of 44 purchases of replacement land have been made by PAFs comprising a total of 97 EPAPs.*”²⁴⁸ This was apparently done without CCL assistance. Management provides no details about location of the replacement land, its quality, comparative size, or whether it was purchased with compensation money alone. In addition, Management does not indicate whether the land and area are providing a better or at least the same, income that the PAP was deriving from his original land.
233. In April 2000, Coal India Ltd. revised its policy, essentially dropping the land for land option. Instead, it provides for monetary compensation, in addition to land compensation, “*for land losers whose loss of land entitle them to mine employment.*”²⁴⁹
234. In their September 2000 report on Institutional Strengthening, the IMC recognized that the land-for-land option is not common in India. However, it should be “*the easiest to implement as nearly all the PAPs have the necessary skills for it.*”²⁵⁰ The IMC suggested that “*the simplest approach would be to allow any PAPs ... to select an area of similar size and productive capacity to that affected by the project.*”²⁵¹ Recognizing that Coal India Ltd. policy provides for nothing more than the cost of land, they propose that “*some transitional costs should be contemplated in any land for land proposal*” such as legal fees related to land purchase and allowances to cover the period between the move and the first harvest.²⁵² **The Panel agrees and suggests that Management take this advice fully on board before commencing another similar project.**
235. **Under the Bank’s policy, the land for land option is not mandatory, but it is clearly preferred wherever possible. Under CCL’s Parej East RAP, CCL was to offer assistance to PAPs to find replacement land. According to Management CCL received no requests for such assistance. But in the RAP some 117 opted for this assistance and 115 qualified. Management also indicated in its**

²⁴⁷ Id., p. 6. In its next report, the ESRP concluded that “[t]he stated reason is that the necessary replacement land is not available. We are unsure whether this is true or whether the approach being followed merely avoids the higher land acquisition costs which the Subsidiaries would have to incur if they pursued this option.” See also Id., para. 3.1.4.2.

²⁴⁸ See Management Comments 2002, *supra* note 34, para. 19, in Annex 3 of this Report.

²⁴⁹ See November 1994 Aide Memoire, para. 22. The payment is Rs100,000 for the first acre of land, or pro-rata payment subject to a minimum of Rs25,000. For the two and three acres the compensation is, respectively, Rs75,000 and Rs50,000 on pro-rata basis for land above three acres.

²⁵⁰ IMC Group Consulting Ltd., Technical and Operational and Management Guidelines, Vol. I: Strengthening of Coal India Ltd. Social and Environmental Management Capability, Final Report, September 2000, para. 6.2.

²⁵¹ Ibid.

²⁵² Ibid.

Response that a large number of PAFs found replacement land, indicating that, with effort, it could be obtained. The Panel finds that Management was not in compliance with paragraph 4 of OD 4.30.

6.1.3. Non-Farm Based Self-Employment

236. OD 4.30 requires a detailed resettlement plan, a timetable and a budget if displacement cannot be avoided. Paragraph 4 states that “[r]esettlement plans should be built around a development strategy and package aimed at improving or at least restoring the economic base for those relocated.” The importance of project preparation work is stressed. Paragraph 29 states that “[d]uring project preparation, the feasibility of resettlement must be established, a strategy agreed upon, the resettlement plan drafted, and budget estimates prepared.” Paragraph 30 requires “[s]ubmission to the Bank of a time-bound resettlement plan and budget that conforms to Bank policy is a condition of appraisal for projects involving resettlement.”

237. The Requesters claim that the “*the much flaunted self-employment projects which the Bank guaranteed would fill in for the [CCL employment] shortages, are grossly failing to replace livelihood, if they have at all materialized.*”²⁵³ They contend that the income restoration schemes in Parej East “*are mostly on paper, they have not worked on the ground.*”²⁵⁴

238. In its Response, Management states that the 1994 Baseline Survey identified 418 EPAPs entitled to income restoration assistance. This number was increased to 625 EPAPs in the 1997 census,²⁵⁵ of whom 169 are in training or are still to be trained. In 1994, just 26 EPAPs expressed an interest in self-employment. Another 109 expressed an interest in continuing their current primary occupations (animal husbandry, cottage industries, and business). Yet, it is evident that three years later, in 1997, most EPAPs had to choose a self-employment option to restore their former standard of living. There is nothing in either the 1994 Baseline Survey or the RAPs to indicate that the EPAPs were counseled about the implications of the self-employment option, and nothing to suggest that the EPAPs were aware of the implications of trying to become full time entrepreneurs.²⁵⁶

6.1.3.1. The Market Surveys

239. Paragraph 30(e) of OD 4.30 requires the Bank appraisal mission to ascertain, inter alia, “*the feasibility of the implementation arrangements.*” It does not spell out the need to conduct market surveys on the income restoration options offered to displaced PAPs. However, Bank internal reviews advise Staff to carry out feasibility

²⁵³ Request for Inspection, *supra* note 6, para. 4(b)(ii).

²⁵⁴ Supplement to Request, *supra* note 22, para. 5, in Annex 2 of this Report.

²⁵⁵ Management Response 2001, *supra* note 13, para. 48.

²⁵⁶ *Id.*, para. 84, states that “*EPAPs have been consulted on training options and have been able to choose what type of training they wanted for self-employment.*”

studies on income restoration during the preparation stage.²⁵⁷ Bank staff interviewed by the Panel confirmed that this should be done.

240. Management cleared the Parej East RAP in December 1994. From the preparation of the RAP in 1994 to the approval of the CSESMP in May 1996, no market survey was conducted. Nor had any study been undertaken of the PAPs' capacity to become entrepreneurial. From early 1997 Bank supervision reports recognized that training was being offered for occupations that had not been the subject of any economic, financial or technical feasibility test.²⁵⁸ The records indicate that it was March 1998 before the Parej East market survey was prepared, in compliance with a condition of effectiveness for the CSR loan.²⁵⁹ This was four years after the original RAP and nearly two years after approval of the CSESMP.
241. However late, the March 1998 Market Survey²⁶⁰ appears adequate in identifying the technical, economic and financial needs of the Parej East community, particularly the consumption needs of the mine and the ability of local PAPs to participate in this economy. It attempts to address the specific problems and needs of the PAPs in Parej East. It also does a good job of listing particular products and services required by the mine, and identifies those which could be provided by PAPs including unskilled labor to contractors (e.g. cleaning, maintenance, cooking, security, construction) and producing foods for mine personnel (e.g. dairy, meat, spices, vegetables, and mushrooms).
242. The problem of income restoration or generation does not lie with the Market Survey itself but in the absence of follow-up mechanisms to implement its suggestions. In particular, subsequent annual RAPs fail to follow up on the central suggestion of developing a Central Marketing Cell (CMC) and hiring a consultant to facilitate the self-income projects. The RAPs discuss "training" only in general terms without specific reference to the particular situation at Parej East and its PAPs. In addition, while the Market Survey is adequate in identifying needs, feasibility studies testing some of its suggestions could have and should have been done within a short time of its completion. The measures suggested by the Market Survey as avenues of income restoration are not adequately addressed in the annual RAPs. Workshops and seminars suggested by the annual RAPs are not in themselves sufficient to implement these income generation ideas.
243. **The Panel finds that Management failed to ascertain the adequacy or feasibility of the self-employment income rehabilitation strategy in the Parej East RAP**

²⁵⁷ See, for example, a handbook on involuntary resettlement projects in India, that specifically advises the staff to conduct technical and financial feasibility studies of all income generating options, in order to determine each option's capacity to help achieve the goal of restoring the PAPs pre-project income.

²⁵⁸ See February 1997 Aide Memoire, Draft Addendum to Aide Memoire; see also Quarterly ESMP Report for the period ending June 1998, and July 1998, Part B(2.0).

²⁵⁹ CSR, schedule 9 of CSR Loan Agreement, Obligations of the Borrower relating to Environmental and Social Mitigation, para. 3(c).

²⁶⁰ Market Survey and Assessment of Skills and Training Needs, Col. S. Bakshi. The document is not dated, however, it was submitted by March 1998.

during appraisal and, after a Market Survey was finally conducted in March 1998, it failed to ensure that the recommended follow-up measures were taken. In light of this, Management was not in compliance with paragraphs 24, 29, and 30 of OD 4.30.

6.1.3.2. Income Restoration through Self-Employment

244. Paragraph 24 of OD 4.30 requires the Bank to ensure that displaced people are “assisted to improve, or at least restore their former living standards, income earning capacity, and production levels.” Coal India Ltd. R&R policy states that PAPs will be assisted “to establish non-farm self-employment through the provision of infrastructures, petty contracts or formation of cooperatives.”²⁶¹ CCL’s original RAP states that CCL “would render assistance to PAFs in taking up non-farm income restoration measures.”²⁶² (emphasis added)
245. The Requesters contend that “*after a suitable lapse of time*” self-employment schemes have failed to restore incomes.²⁶³ In its Response, Management acknowledges that “[i]ncome restoration requires not only adequate training but also follow up support to enable the PAPs to use the training received.”²⁶⁴
246. Management indicates that about 37 percent of the EPAPs who have completed training are earning an income related to it.²⁶⁵ In its April 2002 Response, Management emphasizes that the focus is now on training follow-up assistance for the EPAPs who, as yet, have not established a relevant income base.²⁶⁶
247. In the Panel’s view, this follow-up assistance should have been designed or planned as part of an income-generation strategy, as it is recognized in the CSESMP SAR as well.²⁶⁷
248. In its Response, Management suggests a number of reasons for lack of income earning after training. For example, they point out that CCL has provided support in terms of infrastructure and/or productive assets to 78 EPAPs. Even with this, Management considers that “there is no guarantee that the EPAPs will make the necessary effort to turn this assistance into a viable source of income.” Whatever the reason, Management explains that “*the 87 EPAPs who are not earning an income after completing training, as well as others who have not restored their*

²⁶¹ See table CSESMP SAR, *supra* note 2, Annex 2.4, Coal India Ltd.’s Resettlement and Rehabilitation policy, after para. 10 A(i)(c).

²⁶² RAP, *supra* note 74, para. 3.6.2.

²⁶³ Supplement to Request, *supra* note 22, para. 5, in Annex 2 of this Report.

²⁶⁴ Management Comments 2002, *supra* note 34, para. 20, in Annex 3 of this Report.

²⁶⁵ All these figures are updated in the April 2002 Management Comments where it is stated that 240 EPAPs have completed training and 89 (again about 37%) are earning an income from the training received.

²⁶⁶ Management Comments 2002, *supra* note 34, para. 21, in Annex 3 of this Report.

²⁶⁷ CSESMP SAR, *supra* note 2, para. 4.7.

*incomes by means of their own or with assistance from the project,*²⁶⁸ *remain in the target group*²⁶⁹ (emphasis added).

249. The Panel is surprised that Management would accuse those who never asked to be relocated of “*not making the necessary effort*” to do something that was imposed upon them by those who acknowledged that such schemes had mostly failed elsewhere. After all, the PAPs never expressed a preference for non-farm self-employment; they were erroneously led to believe for years that they would get a job in the mine; and they were in effect forced into this situation for the greater good of others. Most are already suffering the extra traumas of displacement experienced by the poor, many of whom have been forced to give up ownership for land without title, or have been waiting for years to receive compensation for tribal land rights, or who received court awards for increased land compensation that is now being challenged by CCL.
250. During its visits to the Pindra resettlement site, the Panel observed that a number of PAPs appeared to be listless and depressed. Given their initial vulnerability, the many uncertainties they have experienced and, in some cases, their still pending anxieties, it seems understandable that some would suffer depression. Paragraph 19 of OD 4.30 stresses the need for health services to prevent increases in “*morbidity*” due to “*the stress of being uprooted.*”²⁷⁰ The Panel considers that this condition deserves appropriate treatment rather than criticism.
251. **Amount of Income from Self-Employment.** In its Response, Management explains that “[o]f the 138 EPAPs who have completed training, 58 report additional sources of income. After training, the level of income is likely to fluctuate depending upon the season, the type of trade, and the amount of time the EPAP has available to practice the trade.”²⁷¹
252. In the Panel’s view, it was misleading to advocate training/self employment as the means to restore most EPAPs standard of living in Parej East. As pointed out by the ESRP, poor families in India cannot survive on one source of income and tend to have many jobs each year. The data in the Baseline Survey indicates that this was evident from the outset in Parej East.
253. The supervision team appears to have recognized, quite early on in implementation, that in reality the training/self employment schemes in Parej East could only provide a supplementary source of income. For example, in December 2001 the supervision team points out that 89 EPAPs who have taken training are using their skills to supplement their household earnings. Activities like cane basket making and carpet

²⁶⁸ Management Response 2001, *supra* note 13, para. 84 note 53, notes that: “[a]portion of the EPAPs are women who are using the skills acquired to meet their household needs and do not intend to generate outside income.”

²⁶⁹ *Id.*, para. 84.

²⁷⁰ See OD 4.30, Resettlement Planning Shelter, Infrastructure, and Social Services, para. 19 note 12.

²⁷¹ Management Response 2001, *supra* note 13, para. 85.

making continue to provide supplementary income. Those engaged in basket making also work for coal loading contractors.²⁷² The Panel concurs and considers that this approach places self-employment schemes in a correct perspective for a community like Parej East.

254. Many EPAPs engaged in the informal sector were not interested in self-employment training. In its Response, Management acknowledges that “[p]otential incomes derived from most of the self-employment training options cannot compete with those of mine employees or those who are engaged in the sale of pilfered coal and the production of coking coal. In Parej East, the incomes of the 87 EPAPs who are engaged in the pilferage and sale of coking coal range from Rs.350 to Rs.2,500 per month and average Rs.1,200 per month.”²⁷³
255. In preparing the CSESMP, Bank staff were aware of the huge risk and challenge involved in accepting a policy that essentially made non-farm self-employment the only income restoration measure available for PAPs to regain their standard of living.²⁷⁴ However, while the Bank had long acknowledged that experience with non-farm based self-employment schemes was rarely successful, particularly in India, it accepted such schemes as the central pillar of Coal India Ltd.’s R&R policy for restoring or improving standard of living of those involuntarily resettled. The initial approach after the CSESMP was approved appears to have been to put off consideration of other alternatives until it was shown definitively that the strategy had not worked.
256. In 1996, the Task Manager informed the Requesters that “... a time of one year [should] be given to see if the new policies work. Then an independent review panel would be coming to see the situation.”²⁷⁵ Just over a year later the independent ESRP did visit the site. It found that “training villagers in new income –generating skills and actually creating viable alternative income sources is difficult and ... takes much time.”²⁷⁶ The ESRP repeated this judgment during each of the next four years. In its 2000 Report, they said that “the results from the income restoration activities to date have been largely disappointing.”
257. In June 1997, Management admitted that the self-employment schemes were not working. Recognizing this, the current supervision team insisted that Coal India Ltd. find other alternative income generating schemes, suggesting that the most obvious was land based²⁷⁷ (emphasis added). The Staff member concerned in the matter told

²⁷² December 2001 Aide Memoire, para. 33.

²⁷³ Management Response 2001, *supra* note 13, para. 86.

²⁷⁴ See Project Files, April 20, 1991; Project Files, November 3, 1994; Project Files, December 1, 1994; CSESMP SAR, *supra* note 2, Annex 3.2, Project Implementation, para. 49; Office Memo May 13, 1996, *supra* note 3, para. 21.

²⁷⁵ Project Files, June 9, 1996.

²⁷⁶ ESRP, 1997 Report, *supra* note 91, p. 25.

²⁷⁷ See September 1998 Aide Memoire, para. 5. Bank staff recognized that Coal India Ltd. needed to explore “other options with a larger potential for large scale income generation ... The most obvious is land based income generation.”

the Panel during interviews that non-farm self-employment should be just one option among several others.

258. **During Project Preparation and appraisal, Management relied almost entirely on non-farm self-employment as the strategy to regain standards of living, without assessing its feasibility for income restoration in Parej East. As a result, many PAPs in Parej East have failed to restore their living standard and incomes to their previous levels and consequently have suffered and continue to suffer harm.**

6.1.4. Wage Labor

259. Coal India Ltd. R&R policy entitles sharecroppers, land lessees, tenants and day laborers to jobs with contractors. It states that “[c]ontractors will be persuaded to give jobs to eligible PAPs on a preferential basis, where feasible”²⁷⁸ (emphasis added). The Requesters state that “while a few PAPs find daily wage employment around the mine the majority are not able to do so,” and contractors are not giving jobs to the PAPs.²⁷⁹

260. In its April 2002 Response, Management replies that “causal labor opportunities exist, and have been capitalized on by interested PAPs.”²⁸⁰ According to Management, CCL has also “made an agreement with the contractors who execute civil works contracts for the mine to employ PAPs as causal laborers.”²⁸¹

261. **In the Panel’s view, it is a positive development that the supervision team’s efforts to get formal agreement to employ PAPs as causal laborers have finally succeeded and it is to be hoped that this will make quite a difference to some of the displaced families.**

6.2. Timing of Income Restoration

262. From 1996 to date, the Requesters have raised several basic issues about the timing of income restoration. In summary, they stated that the Bank had a misguided assumption about the length of time it would take for the Parej East population to become entrepreneurial; income restoration should be in place before PAPs are displaced; there must be a time bound transition period with payments to help PAPs for a reasonable period to make the switch between current and new livelihoods; and the rehabilitation grant was not available to the PAPs in Parej East. These are taken up in turn.

²⁷⁸ RAP, *supra* note 71, para. 1.3.1.5 B(i).

²⁷⁹ Supplement to Request, *supra* note 22, para. 3, in Annex 2 of this Report.

²⁸⁰ Management Comments 2002, *supra* note 34, para. 18, in Annex 3 of this Report.

²⁸¹ *Id.*, para. 17.

6.2.1. *Changing into Entrepreneurs*

263. During the investigation, the Requesters told the Panel that the people of Parej East, whether tribal or non-tribal, have largely lived in a non-formal, non-monetary economy, with little social mobility, little education and no entrepreneurial skills. In their view, if you dispossess such people of their natural resource subsistence basis, there is no way they could be rehabilitated within the five-year span of the CSESMP.²⁸² They felt that “*to convert a person from a tradeless villager ... into an entrepreneur will take not less than a decade.*”²⁸³
264. During interviews, one Staff member recognized that the PAPs would find it very difficult to become businessmen, while others focused on the Bank’s effort to help Coal India Ltd. change its culture. They stressed the time it takes for a huge corporation run by engineers to change its approach to involuntary resettlement, especially its approach towards the poor, Scheduled Castes, and Scheduled Tribes. During project preparation, Coal India Ltd. recognized its lack of capacity to carry out resettlement according to Bank conditions, and, at times, objected to adopting its new policy for this reason. To deal with this, one of the three components of the CSESMP is capacity building.
265. As OD 4.30 recognizes, special attention must be given when the poor and vulnerable are involuntarily resettled. In the Panel’s view, the PAPs in Parej East were being asked to make a huge adjustment in their lives. Even though their life and income base had gradually changed before the CSESMP started, it is also clear that, to their detriment, they have not been able to participate in the new economy. The literacy rate alone suggests their vulnerability, as does the fact that for the largest percentage of them, casual or wage labor, was their main source of income. Tribals, in particular, had already been deprived of much of their traditional sources of income because expanding mines had encroached over their traditional lands, or the forests were degraded.
266. In the Panel’s view, it was unrealistic to assume that, in the space of five short years, people affected by the project in Parej East, many of them poor tribals lacking social mobility, education, or an entrepreneurial culture, can be uprooted from their communities, transferred to a new one, provided with training for self employment, and some level of monetary compensation and then expected to improve, or at least restore, their former living standards, income earning capacity and production levels. It was doubly unrealistic when it is understood that, before this can commence, the implementing agency, CCL, must undergo a significant change in institutional culture and build new capacity to undertake environmental, social and resettlement work. The Panel found evidence that, with the Bank’s assistance, progress had been made in this regard, but even CCL admits that much remains to be done.

²⁸² CASS to Inspection Panel, December 23, 2001.

²⁸³ Supplement to Request, *supra* note 22, para. 6, in Annex 2 of this Report.

267. In the Panel's view it was a major planning flaw for the Bank not to have recognized that it was unrealistic to expect that the PAPs in Parej East could become entrepreneurs in five years. In accordance with paragraph 30 of OD 4.30 the feasibility of Parej East PAPs regaining their livelihood through self-employment should have been reviewed when the RAP was appraised.

6.2.2. Rehabilitation before Displacement

268. The Requesters, backed by international NGOs, complained that the strategy for income restoration should have been in place and implemented long before people were displaced.²⁸⁴ Management replied that “[t]otal economic rehabilitation is not possible before displacement, since the success of the rehabilitation can only be assessed after resettlement”²⁸⁵

269. Resettlement causes immediate hardship compounded by loss of income and, in an ideal world, income restoration activities should clearly be in place before displacement. But, in practice, the Panel appreciates Management's view that total economic rehabilitation may be impossible before displacement. In the particular case of Parej East, however, there was a long time period between completion of the RAP in 1994 and actual displacement (1998, 1999, and 2000). According to the experts this time gap is usually about two years, not four, five, or six. Two years seems a sufficient amount of time to have the income restoration plans well in place to accommodate PAPs before they shift.

270. The first PAPs had been scheduled for relocation in 1997 but objected because, among other things, they did not know how they would survive. However, Coal India Ltd. officials told the Panel that they had personally intervened and made a special arrangement for income generation for these PAFs. They then agreed to move. Clearly, then, there was not even an income restoration strategy for Parej East before PAFs began to be displaced. Since then, according to one Staff member, many PAPs have at least been given training before being shifted.

271. In the Panel's view, a feasible strategy for income generation should have been in place in Parej East at the time the RAP was prepared.

²⁸⁴ Request for Inspection, *supra* note 6, Attachment 6 para.7, CASS/JJM to the World Bank: Report on the East Parej OCP, April 20, 1996. See also *Id.*, Attachment 12 para. (A)2, The Berne Declaration to World Bank, NGO benchmarks for the World Bank's India Coal Sector Projects, dated September 13, 1996.

²⁸⁵ Management Draft Response to Berne Declaration letter dated September 1996, October 18, 1996. See also Office Memo May 7, 1997, Acting Secretary to Board of Executive Directors, Management Response to The Berne Declaration, Outstanding Issues, February 7, 1997.

6.2.3. Transition Period and Subsistence Allowance

272. The Requesters complain that the Coal India Ltd. R&R policy mentions a subsistence allowance,²⁸⁶ but that allowance has never been given to the eligible PAPs. In any event, they claim, at the fixed rate of 300Rs a month it could not achieve any subsistence purpose.²⁸⁷ Without referring specifically to a transitional allowance, the Requesters further complain that many PAPs have lived, and are living, off their compensation money, while other families still find it difficult to sustain themselves.²⁸⁸
273. In its April 2002 Response, Management asserts that “no PAP has received a subsistence allowance because the eligibility criteria have not been met”²⁸⁹ and further states that the Coal India Ltd. policy does not mention an amount. In the Response, Management does not refer to the possible existence of a transitional allowance under the RAP.
274. The Panel notes that OD 4.30 para. 3(b)(ii) calls for support during the transition period in the resettlement site. Pursuant to that, the Coal India Ltd. policy provides for the “transition period to be kept to a minimum,”²⁹⁰ The Parej East RAP reiterates the Coal India Ltd.’s R&R policy.
275. The Panel also notes that the conversion of OD 4.30 to OP 4.12 in December 2001 explains this policy requirement more clearly when it states that the RAP should include measures to ensure that displaced persons are “offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standard of living.”²⁹¹ The policy adds suggestions concerning the type of support to be offered. “Such support could take the form of short-term jobs, subsistence support, salary maintenance or similar arrangements.”
276. According to Bank records, as far back as 1991, a Bank sociologist stated that there should be a separate section on the transition arrangements for all categories of PAPs.²⁹² A few years later, in 1994, the legal department asked Management to persuade Coal India Ltd. to establish target dates for the transition period, because

²⁸⁶ CSESMP SAR, *supra* note 2, Annex 2.4, Coal India Ltd.’s Resettlement and Rehabilitation policy, para. 14-15.

²⁸⁷ Supplement to Request, *supra* note 22, para. 7, in Annex 2 of this Report. See also Request for Inspection, *supra* note 6, Attachment 6 para. 11.4, CASS/JJM to the World Bank: Report on the East Parej OCP, April 20, 1996, where CASS criticized the subsistence allowance in the Parej East RAP, suggesting that it should be Rs2000 per month and that it have an annual increment linked to the inflation rate.

²⁸⁸ Request for Inspection, *supra* note 6, Attachment 43 p. 2, CASS to Christensen, dated September 1st 1998.

²⁸⁹ Management Comments 2002, *supra* note 34, para. 28, in Annex 3 of this Report.

²⁹⁰ CSESMP SAR, *supra* note 2, Annex 2.4, Coal India Ltd.’s Resettlement and Rehabilitation policy, para. 7.

²⁹¹ OP 4.12, Required Measures, para. 6(c)(i).

²⁹² See Project Files, April 20, 1991.

certain aspects of the resettlement plan need to be time bound.²⁹³ In 1995, an NGO associated with CASS proposed assistance for up to three years until PAPs had been restored to at least their former standard of living.

277. One of the Bank's experts on involuntary resettlement acknowledged that the Bank should require some sort of transition package, ideally cash income for a defined length of time that includes the period of retraining. The Task Leader informed the Panel that he felt cash assistance was dangerous as PAPs would be very unlikely to make any effort to follow up on their training. Instead, he had continually pushed Coal India Ltd. to help PAPs in transition with immediate investment assistance after they had completed their training but acknowledged that this had not always been done. Investment assistance after training was the central requirement of the 2002 RAPs.
278. The Panel also notes that Coal India Ltd. policy provides a subsistence allowance or lump sum grant as a rehabilitation option (package D) for the purpose of productive investment. To be eligible, the PAP must be an individual from whom less than two acres of land is acquired, the PAP must not have income from other sources that exceeds Rs12,000/- per year, and none of the other options should be available to the PAPs.²⁹⁴
279. The RAP for Parej East reiterates the Coal India Ltd. policy.²⁹⁵ Under another Section entitled "*Relocation and Transitional allowance,*" however, it states that, apart from the one time relocation grants, "*there is separate provision for subsistence allowance for those PAPs who lose their land and do not opt for jobs or do not qualify for jobs.*"²⁹⁶ The RAP then specifies that families losing up to one acre of land are entitled to "*Rs.300/- per month + an ex-gratia amount of Rs.100 per month.*" Families losing more than one acre of land are entitled to "*Rs.300/- [per] month per acre subject o a maximum of Rs.1000 [per] month + an ex-gratia amount Rs.100/- per month.*"²⁹⁷ It adds that these allowances are payable for 20 years.²⁹⁸
280. It is clear that the eligibility criteria for the so-called "*subsistence allowance*" in the Parej East RAP differ significantly from those provided in the Coal India Ltd. policy. It is also clear that the Coal India Ltd. policy treats the subsistence allowance as "*rehabilitation assistance*" against productive investments when none of the other rehabilitation options are available to PAPs who have less than two acres of land. On the other hand, the Parej East RAP appears to treat the subsistence allowance as a "*transitional allowance*" for all those who lose land and who either do not choose a job in the mine or who do not qualify for one.

²⁹³ See Project Files, May 4, 1994.

²⁹⁴ See CSESMP SAR, *supra* note 2, Annex 2.4, Coal India Ltd.'s Resettlement and Rehabilitation policy, para. 14.

²⁹⁵ See RAP, *supra* note 74, para. 1.3.1.6(c).

²⁹⁶ *Id.*, para. 3.4.4(A).

²⁹⁷ *Id.*, para. 3.4.4(B).

²⁹⁸ *Ibid.*

281. The “*transitional allowance*” in the Parej East RAP is the only “*subsistence allowance*” for which details are given. In the Panel’s view it is not clear whether the subsistence allowance detailed in the RAP is in addition to, or instead of, the rehabilitation assistance allowance provided for in the Coal India Ltd. policy. It is clear that the Requesters refer incorrectly to the Coal India Ltd. R&R policy when they intend to refer to the Parej East RAP “*transitional allowance*.” The eligibility criteria for this transitional allowance are broader than those in the Coal India Ltd. R&R policy. It is not clear why Management has, in its Response, referred only to the Coal India Ltd. policy. It is not at all clear why Management then asserts, that no PAP has received a subsistence allowance because “*the eligibility criteria have not been met.*”
282. On July 25, 2002, the Panel asked Management for a clarification as to whether the PAPs received the ‘transition allowance’ provided for in paragraphs 3.4.4 (A and B) of the Parej East RAP. In its response of October 16, 2002, Management provided data on PAPs who had received the Relocation Allowance (Part A of 3.4.4). According to Management, 30 PAPs have received this ‘transition’ allowance of Rs7000, but the Panel notes that there are PAPs who continue to suffer harm.
283. **In the Panel’s view, Management failed to ensure that the Parej East RAP made effective provision for support during a time-bound transition period after displacement as required by OD 4.30. Some PAPs have suffered harm by temporarily losing their standard of living and a number continue to do so.**
284. Management provided no data as to whether PAPs had received the Subsistence Allowance (Part B of 3.4.4). The Panel notes that Management’s response of April 2002 asserted that “no PAP has received a subsistence allowance because the eligibility criteria have not been met.” The R&R budget for Parej East Ocp., however, contains a line item for subsistence allowance/grant for the years 1994 – 1998. No such line item appears in the budget for years 1998-2002. Management has provided no explanation concerning the disposition of the monies allocated for the subsistence allowance/grant or the reasons why the PAPs were regarded as ineligible for this benefits or the procedures followed to arrive to this determination. The supervision reports made available to the Panel do not provide any further information on this matter. **The Panel finds that Management has failed to demonstrate that its has complied with paragraph 3(b) (ii) of OD 4.30 that requires that displaced persons “be supported during the transition period in the resettlement site.”**

6.3. Adoption of Alternative Income Generating Schemes

6.3.1. Related to the Coal Industry

285. The Requesters complain that they have to resort to “*illegal acquisition of coal supplies*,” and thus be exposed to police action, because they have not being given any legal right to those coal supplies.²⁹⁹
286. In its April 2002 Response, Management points out that no police action has ever been initiated against the local population for illegal collection of coal. Management contends also that 87 EPAPs refrained from self-employment training because the potential income would not compete with the income that PAPs can obtain from the sale of pilfered coal and production of coking coal.³⁰⁰



Picture 5: Income restoration. Major informal sector activity

287. The Panel team observed a great deal of soft coke activity during its visit. In the Panel’s view, given the comparative income advantage, it is not surprising that PAPs would prefer to engage in so called “*illegal*” coal trading activities. During its second visit, the Panel found that the current CCL Managing Director well understands the situation and shares the Panel’s view that a way should be found to legalize the soft coke activity.

6.3.2. Land Based Income Generation

288. Soon after CSESMP implementation began in 1997, the supervision team felt that the objective of all the PAPs improving, or at least regaining their former standard of living was unlikely to be achieved through non-land-based self employment. In

²⁹⁹ Supplement to Request, *supra* note 22, para. 18, in Annex 2 of this Report.

³⁰⁰ Management Comments 2002, *supra* note 34, para. 69, in Annex 3 of this Report.

their view, additional measures were needed. In December 1997, Management and Coal India Ltd. agreed on a land-based income restoration scheme to be carried out on unused or reclaimed mine land.³⁰¹

289. No action was taken in 1998, and, in February 1999, Coal India Ltd. agreed to select consultants for five pilot projects, including one in CCL, to develop an approach to undertake land based income restoration.³⁰² Management warned Coal India Ltd. to find a solution; otherwise, it would have to pursue other viable income restoration alternatives in order to comply with the legal covenants under the CSRP and CSESMP.
290. In February 2000, Coal India Ltd. informed the supervision team that CCL would not proceed with the pilot because there was no land available. However, they stated that such land might become available in two to three years. When the Panel met with CCL officials, they explained that it was difficult to undertake this scheme because there was no financial incentive: at the end of the mine operation the land would revert back to the Government.
291. **Like the ESRP, the Panel believes that this would offer the most promising possibility for restoring or improving the lives of PAPs, in particular in Parej East. In the Panel's view, the current Bank supervision team must be commended for recognizing that a land-based income restoration option was essential. Since doing so, the Team has made an impressive effort to have it adopted. Noting the success of the one pilot in operation in another mine, the supervision team has recommended its immediate adoption in other subsidiaries.**³⁰³ Unfortunately this will not help the PAPs in Parej East.

³⁰¹ September 1998 Aide Memoire, para. 5.

³⁰² Project Files April 26, 1999.

³⁰³ December 2001 Aide Memoire, para. 7.

Chapter 7

7. Indigenous Peoples Development Plan

292. OD 4.20 describes “tribal groups” and “scheduled tribes” as social groups that have a distinct social and cultural identity from the dominant society that makes them “vulnerable to being disadvantaged in the development process.”³⁰⁴ The objective of this Bank policy “is to ensure that indigenous peoples do not suffer adverse effects during the development process, and that they receive culturally compatible social and economic benefits.”³⁰⁵ When a Bank-financed project affects indigenous peoples, the borrower should prepare an indigenous peoples development plan (IPDP) consistent with the Bank’s policy.³⁰⁶
293. Under the CSESMP social mitigation activities are undertaken through either RAPs, or Indigenous Peoples Development Plans (IPDPs), which deal with two different target groups. The RAPs are instruments to mitigate individual property and income losses caused by land acquisition for people being resettled. The IPDPs are for communities in the vicinity of the mines not subject to involuntary resettlement to enable them share in development benefits.³⁰⁷

7.1. Separate IPDP for Tribals

294. During project preparation, Management and the Borrower agreed that the OD 4.20 would cover not just tribals but also other vulnerable people affected by mine expansion. With the CSESMP covering five different States in India, the total target group under the IPDPs comprises around 186,000 people belonging to 186 villages. In its Response, Management explains this decision by pointing out that “about a third of the IPDP target group belong to scheduled tribes who are generally settled in mixed villages among caste Hindus and scheduled caste Hindus.”³⁰⁸ In this context, development activities focusing exclusively on tribals would be socially divisive, and the IPDPs are therefore aimed at the community as a whole with particular emphasis on the poor and women.”³⁰⁹
295. Coal India Ltd. already had a community development program to cover vulnerable people,³¹⁰ and during Project Preparation Management proposed that CCL should

³⁰⁴ OD 4.20, Definitions, para. 3.

³⁰⁵ OD 4.20, Objective and Policy, para. 6.

³⁰⁶ OD 4.20, Bank Role, para. 13.

³⁰⁷ Management Response 2001, *supra* note 13, para. 17.

³⁰⁸ Management points out that the official classification of social and/or ethnic groups and the land they live on rests on principles established in 1890, and not changed substantially since then. As a result, what is classified as forest area may long since have been converted into farm land, and people who were originally in migratory groups may have become sedentary farmers.

³⁰⁹ Management Response 2001, *supra* note 13, para. 18.

³¹⁰ OD 4.20, Indigenous Peoples Development Plan, para. 14(h) suggests that programs that are effective and running should be supported rather than replaced with new programs.

restyle it to conform to the requirements of OD 4.20. Issued in September 1995, Coal India Ltd.’s revised Corporate Community Development Plan, (or the ‘generic IPDP’) states that its “... *immediate objective is to assist indigenous local communities in the mine area to create, revive and maintain relevant and functioning community assets, institutions and services that can improve their choices and living standard in the ‘modern’ world, and maintain and develop traditional ways of living and social ties of the communities.*”³¹¹

296. The ‘generic IPDP’ states further that its aim “... *is to present a policy, an institutional framework and a strategy for implementation of activities that will assist indigenous communities ..., allowing for informed public participation in the formulation and implementation of the plan, and ensuring that benefits reach the weaker sections of the communities, in particular Scheduled Tribes and Scheduled Castes, on a sustainable basis.*”³¹² The “generic IPDP” was therefore to serve as an umbrella terms of reference for the mine-specific IPDPs, setting out guidelines for their preparation, including the components required.
297. Recognizing that coal mining has contributed to deteriorating environmental and social conditions, the Plan acknowledges that “[t]he most obvious social effect on indigenous communities of the mining activities has been the loss of land for living, agriculture, grazing, collection of forest produce for food and fuel”³¹³ while “[t]he less obvious, gradual and long-term impact may be the change in traditional lifestyles which was based largely on subsistence economy.”³¹⁴
298. Prior to appraisal of the CSESMP, Management found Coal India Ltd.’s new “generic IPDP” to be in conformity with the OD 4.20.
299. **The Panel considers that, while the Coal India Ltd. “generic IPDP” is not directed exclusively at tribals, the decision to include all vulnerable people in the context of a framework plan to be eventually applied to all 495 Coal India Ltd. mines was in conformity with OD 4.20.**

7.2. The Original Parej East IPDP

300. Paragraph 18 of OD 4.20 requires that “[t]he plan for the development component for indigenous peoples should be submitted to the Bank ... prior to project Appraisal. Appraisal should assess the adequacy of the plan, the suitability of policies and legal frameworks, the capabilities of the agencies charged with implementing the plan, and the adequacy of the allocated financial, and social resources.”

³¹¹ CSESMP SAR, *supra* note 2, Annex 2.5, Coal India Ltd.’s Community Development Plan, pp. 69-70.

³¹² *Id.*, p. 67.

³¹³ *Ibid.*

³¹⁴ *Ibid.*

301. The Panel has examined the records available and finds that in May 1995, the Bank Loan Committee decided that the requirement of paragraph 18 of OD 4.20 could be met through a two-stage process. First, Coal India Ltd. was to submit a generic IPDP, and second, a representative sample of mine specific IPDPs before appraisal in time for the appraisal mission to assess them. The General Counsel dissented. He warned the Loan Committee that Bank policies and procedures had to be followed *“to the letter.”* He stressed that all IPDPs *“had to be formally submitted to the Bank before Appraisal.”*³¹⁵
302. In late November, the ASTHR (Asia Technical Human Resources) gave conditional clearance for appraisal. Although it was noted that the generic IPDP had been *“developed in accordance with OD 4.20,”* the 24 mine specific IPDPs had not yet been received and reviewed. *“It is a condition for this clearance that the 24 IPDPs reflect the generic IPDP, thus complying with OD 4.20. Appraisal cannot be finalized until the mine specific IPDPs have been reviewed and found to satisfy the requirements of OD 4.20.”*³¹⁶ This suggests that, despite the Loan Committee decision, that the reviewing social scientist expected all IPDPs to be reviewed.
303. As required by the pre-appraisal conditional clearance, ASTHR reported on March 11, 1996 that it had *“reviewed the mine specific IPDPs in terms of their adherence to the generic IPDP. The mine specific IPDPs are found to have been prepared in compliance with the requirements defined in the generic IPDP, and thus with OD 4.20.”*³¹⁷ The note implies that all 24 IPDPs had been reviewed. Attached to this ASTHR cover note is the review upon which the clearance was based. It is clear from this document that:
- First, a *“representative sample”* of mine specific plans was not submitted prior to appraisal as agreed at the May Loan Committee meeting. They were submitted and reviewed after the appraisal mission but before appraisal ended and before Negotiations.
 - Second, as had been agreed by the Loan Committee in May 1995, the consultant stated that he was not reviewing all 24 IPDPs, but only *“five randomly selected IPDPs representing each of the consulting firms”*³¹⁸ employed to prepare the 24 plans.
 - Third, the IPDP for Parej East was not among those reviewed for clearance.
 - Fourth, the consultant considered the five IPDPs to have been prepared in *“general”* compliance with the requirements of the generic IPDP.³¹⁹
304. **Based on the foregoing, it is clear that the Bank was not in compliance with paragraph 18 of OD 4.20 in failing to require an assessment and clearance of**

³¹⁵ Project Files, May 16, and 24, 1995.

³¹⁶ Project Files, November 22, 1995.

³¹⁷ Project Files, March 11, 1995.

³¹⁸ Project Files, March 11, 1996.

³¹⁹ Ibid.

the IPDPs for each mines at appraisal. Specifically, the IPDP for Parej East was not reviewed.

305. The Requesters' basic contention is that the original Parej East IPDP was flawed in design: "*with inaccuracies, and trivial development projects being presented as 'mitigation' for the destruction of life-giving natures resource base of the villages.*"³²⁰
306. Coal India Ltd. was to prepare location-specific IPDPs for each mine. Where a community consisted only of tribals, a tailor made IPDP would reflect their needs. Where a community was mixed, tribal and non-tribal, the benefits were to be directed to the vulnerable: tribals, women and youth.³²¹
307. The region around Parej East is inhabited by a large number of tribal people. The bulk of them are from the Santhal tribe, which is the largest tribe in eastern India. They are all settled cultivators and live in permanent villages. They have their own religion, language, and polity, which is characterized by a democratic tradition, with a hereditary village headman. By and large these characteristics are still found in the villages that qualified for IPDPs in this area. The other tribes, known as Birhor, are hunters and food gatherers and are very small in number.
308. For Parej East, an overall IPDP was developed for CCL in late 1995 by a consulting firm. According to Management, the original IPDP was intended to be indicative of the scale and range of activities in hamlets within one kilometer of the mine site at Parej East. CCL's consultants identified 11 hamlets within this range with a total population of 2,913 persons as warranting IPDP benefits.³²² In its Response, Management notes that 71 percent of the population in the 11 communities belongs to Scheduled Tribes, and the rest to different Scheduled Castes.
309. In March 1996, when the Bank's consultant was asked to review a sample of the 24 individual mine IPDPs,³²³ he warned that, if implementation was to be "*based on participatory involvement of the project affected population,*" a number of issues must be clarified before actual implementation could begin.³²⁴
310. During appraisal of the CSESMP, both the Requesters and their local expert professional advisors reviewed the Parej East IPDP in great detail. They sent their detailed comments and suggestions to Management and requested the Bank President to delay Board presentation of the CSESMP until their report had been considered.³²⁵ The Panel found no record in Bank files of any consideration of the

³²⁰ Supplement to Request, *supra* note 22, para. 3, in Annex 2 of this Report.

³²¹ CSESMP SAR, *supra* note 2, Annex 2.5, Coal India Ltd.'s Community Development Plan, p. 70.

³²² The villages are Jharnatungari, Borwa Tola, Kasmal Khas, Bihor Tola, Barison Upper, Barison Lower, Turi Tang Tola, Facodith (Ageria), Ulhara Tola, Ulhara Basti, and Ulhara Zamunia.

³²³ Project Files, March 11, 1996.

³²⁴ Project Files, March 11, 1996, para. 2.

³²⁵ Request for Inspection, *supra* note 6, Attachment 6, CASS/JJM to the World Bank: Report on the East Parej OCP, dated April 20, 1996.

Requesters' report, nor any response to their detailed conclusions either before or after Board approval of the CSESMP in May 1996. In its April 2002 Response, however, Management did address one of the flaws mentioned by the Requesters, namely an inconsistency about which hamlets in the village of Burughutu were to be included in the IPDP.³²⁶

311. As a result of its investigation, the Panel can confirm³²⁷ the Requester's claim that "[t]he whole of chapters 4 to 8 [of the IPDP] are all repeated verbatim"³²⁸ (emphasis in original) in the IPDPs of other subprojects. This includes the 'various options for infrastructure support', which obviously have been made with no particular reference to the East Parej villages. As the Requesters pointed out while this may be convenient, and cost effective, for the consultancy agency, it is hardly effective for searching for options for the tribal population. In light of this, the chapter in each IPDP that describes the "*Felt Needs for Development*" is most odd. This chapter purports to describe what each individual community wanted. The text, however, is identical to that for the two CCL mines in Bihar and the one MCL mine in Orissa, all prepared by the same consultant.³²⁹
312. Compared to IPDPs prepared for other mines,³³⁰ the weakness and flaws of the Parej East IPDP stands out. One of the IPDPs, for example, gives a thorough description of local land use and use of forest products by the local tribals. The "*Felt Needs*" section begins by describing in detail the consultation process followed to obtain the views of the residents of each habitation. The needs, as prioritized by the residents, are then itemized for each community with several dozen items in six major categories.
313. In Parej East, the population in each of the eleven hamlets ranges from 14 to 123 families.³³¹ Each has its own unique composition (some hamlets are fully tribal, some only partly, some follow one faith, others another). The IPDP ignores this. The descriptions of each of the hamlets begin and end with the same qualitative

³²⁶ Management Comments 2002, *supra* note 34, para. 4-6, in Annex 3 of this Report. See also Request for Inspection, *supra* note 6, Attachment 6 para. 6.2, CASS/JJM to the World Bank: Report on the East Parej OCP, April 20, 1996; while the IPDP covers some hamlets also included in the RAP, it does not include others. Only one hamlet of Buruguhtu is included yet the population statistics for that one hamlet include the populations of the other two hamlets, but neither of these two are included in the map or in the development activities. Two hamlets of Durukasmara are not included, or if so are included in the statistics of the other hamlets.

³²⁷ The Panel reviewed three 1995 IPDP plans prepared by ORG (CCL's Parej East and K.D. Hesalong, and MCL's Jagannath). All follow the same template.

³²⁸ Request for Inspection, *supra* note 6, Attachment 6 para. 6.4, CASS/JJM to the World Bank: Report on the East Parej OCP, April 20, 1996.

³²⁹ ESRP 2001 Report, *supra* note 143, p. 81; notes that "[t]he social programmes should be location-specific. ESMP was originally designed to be a localized approach, a set of tailor made projects aimed at particular cultures, and responsive to local needs."

³³⁰ When compared to, for example, the IPDPs prepared by the Agricultural Finance Corp (AFC) for the NCL Dudhichua and Nigahi mines in Madhya Pradesh, to the Asian Information Marketing and Social Research IPDP for SECL's Manikpur in Madhya Pradesh, and to the IPDP prepared by MODE for the Dhanpur mine in Madhya Pradesh,

³³¹ IPDP, *supra* note 207, Table 1.

paragraph, and each of the plans end with very similar recommendations and the same total budget. This approach, flies in the face of the Coal India Ltd. policy cited above, and the Bank's OD 4.20 requirement that location-specific IPDPs should address the specific needs of each community.



Pictures 6 & 7:

Parej East Village not subject to involuntary resettlement but receives IPDP assistance.

314. The Parej East IPDP notes that most of the population is scheduled tribes and therefore landowners. It then explains that few of those who had lost land to make way for the mine had received compensatory jobs in CCL because their holdings were too small.³³² It adds that “[t]he tribals feel that they will remain deprived of CCL employment even in the future due to ... some reason or other”³³³ (emphasis added). But nothing in the IPDP addresses this problem.
315. While the IPDP for Parej East notes the composition of each of the eleven communities in terms of STs (Scheduled Tribals) and SC's (Scheduled Castes), these groups as a whole are undifferentiated. Even though, the IPDP concluded that STs were more disadvantaged than SCs they are not treated in any distinct way in the IPDP.
316. **In the Panel's view, as recognized by the ESRP, the Parej East IPDP should have been responsive to local needs. It was not. The Panel considers that Management could have assessed a local NGO report on the IPDP prior to CSESMP approval. Especially since it did not itself review the Parej East IPDP. Having failed to review the Parej East IPDP, Management could not have assessed whether it was in compliance with paragraph 18 of OD 4.20 during appraisal. The Panel finds that Management was not in compliance with paragraph 18 of OD 4.20 in the preparation of the original Parej East IPDP.**

³³² Id., para. 3.1.3.

³³³ Id., para. 3.2.2.

7.3. Annual Implementation Plan

317. While the flaws in the Parej East IPDP stand out, they could have been corrected, at least in theory, since they were to be implemented through Annual IPDP Implementation Plans developed in consultation with the eleven hamlets concerned.³³⁴ This began in 1998.³³⁵
318. Later, however, a Bank supervision mission found generally, that the original IPDPs were much more than “*indicative*.” It found that CCL employees and the NGO engaged to develop annual village specific implementation plans considered that the original IPDP had actually defined the activities to be covered, and felt that very little alteration was allowed to reflect local village needs.
319. In October 1996, Coal India Ltd., with the Bank’s approval,³³⁶ appointed the members of an independent Environmental and Social Review Panel (ESRP) to monitor the IPDPs and various action plans and “*to assure that the objectives of the Operational Directives will be achieved.*” In its 1997 report, the ESRP noted that the Coal India Ltd.’s generic IPDP appeared to be fully consistent with the intent of OD 4.20, and it considered that the “*progress made in the IPDP villages during the course of the ESMP will determine whether the intent of the Policy can be delivered at the project level.*”³³⁷
320. According to the ESRP, the source of implementation problems was that the original IPDPs were prepared by outside consultants in 1995 and, two years later, had to be implemented by Coal India Ltd’s staff³³⁸ and NGOs engaged for the purpose. In Parej East, CCL’s staff supported by the Xavier Institute (XISS) engaged in March 1997, facilitated the IPDP implementation. Both were inexperienced and neither knew how the original plans had been developed. They could only check off tasks to be completed.³³⁹ XISS told the Panel that it was very difficult to change things significantly and that, in addition, they were faced with the problem of trying to operate within a 1995 budget that was based on an “*indicative*” plan.
321. During its interviews in Parej East, the Panel was able to confirm ESRP’s finding that CCL treated the NGOs it had engaged like hired hands. They had to deliver, without room for critical comment, “*plans and data at regular intervals for it’s [CIL’s] reporting to the World Bank and a wide range of consultants engaged within ESMP.*” As the ESRP said, this “*further moved the program from one which*

³³⁴ Management Response 2001, *supra* note 13, para. 17.

³³⁵ *Id.*, para. 49.

³³⁶ Pursuant to OD 4 .01, Environmental Assessment, paragraph 13.

³³⁷ ESRP, 1997 Report, *supra* note 91, p. 3.

³³⁸ Since it was not possible to recruit a social scientist to assist in the preparation of location-specific IPDP quickly enough to maintain the timetable for implementation, Coal India Ltd. trained its Welfare officers to act as Community Development, Resettlement and Rehabilitation officers (CD/R&R officers). See CSESMP SAR, *supra* note 2, para. 3.14.

³³⁹ ESRP, 2001 Report, *supra* note 143, pp. 58-59.

was to be tailor made for each local community, toward a more generic and less flexible format, which again made it easier for [CIL's World Bank Project Division] to report on." Instead of the villagers being the NGO's clients, the client was now Coal India Ltd..³⁴⁰

322. It appears that experience did not result in much change. In its 2001 report, the ESRP observes that subsequent revisions to the original IPDP *"followed the lead of the first plan[s], adding a little here, subtracting a little there, but essentially repeating the form and substance of initial work plans, year-after-year."* And they conclude that *"[w]hat was originally meant to be a series of location-specific plans, arrived at through stakeholder consultation, tailored to the local needs of villagers, quickly grew into a rigid, inflexible and largely unresponsive exercise. Its own lack of success was built right into the design, in the very genes of the project itself"*³⁴¹ (emphasis added).
323. Management appears to concur, at least to a degree. In its 2001 Response, it stated that the *"original IPDP was primarily intended to be indicative of the scale and range of activities"*³⁴² (emphasis added). At the same time, however, Management took the view that *"social mitigation has achieved satisfactory results with regard to the implementation of" the IPDPs.*³⁴³ In addition, Management thought that extension of the credit for a year would provide scope for strengthening the progress already achieved, *"by further supporting community based organizations (the village working groups involved in IPDP implementation and women's self-help groups) to become sustainable and to enhance arrangements to maintain the community assets created under the IPDPs."*³⁴⁴
324. In its review, the Panel found that each year entire sections of the annual IPDP for Parej East are repeated verbatim, including the one indicating a community's *"felt needs."* Each year there appears to be a *"one size fit all"* plan for each of the 11 communities, regardless of specific needs. The only difference from one hamlet to the next is the specific type of infrastructure cum construction project, where there are slight variations in costs (ranging from Rs30,000 to 70,000.). The description of every hamlet begins with the same qualitative paragraph, and the plan ends with the same recommendations (and the same costs) such as *"Bleaching Powder Distribution," "Fruit Tree Distribution," "Mahlia Mandal,"* etc.
325. In 1999, the Bank supervision team criticized the annual IPDPs for not being linked to the original 1995 IPDPs, both in terms of budget and content.³⁴⁵ However, the Bank's summary review of the 2000 IPDP implementation plan for Parej East found

³⁴⁰ Id., 2001 Report, pp. 17-18

³⁴¹ Id., 2001 Report, p. 18. It should be noted that the ESRP comments in these paragraphs also applied to the annual RAPs.

³⁴² Management Response 2001, *supra* note 13, para. 49.

³⁴³ Id. para. 95.

³⁴⁴ Id., para. 97.

³⁴⁵ 1999 Annual Review, CSESMP IPDP Implementation Plans, p. 1.

this fault corrected noting that it was a carefully prepared plan trying to linked with the original 1995 IPDP and 1998 & 1999 annual IPDPs.

326. **In the Panel’s view, OD 4.20 does not contemplate “indicative” IPDPs either as a substitute for, or as a near-rigid template for, location-specific IPDPs. In Parej East, an indicative IPDP was the basis for the Annual Implementation Plans, which turned out to be inflexible and largely unresponsive exercises. In light of this, the Panel finds that Management was not in compliance with OD 4.20 in preparation of the original IPDP for Parej East.**

7.4. Local Participation

327. Preparation of IPDPs is intended to be driven by the people. OD 4.20 sets out the prerequisites for successful indigenous peoples plans. The first and fundamental one is community participation. Paragraph 14(a) states that “[t]he key step in project design is the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project.” Paragraph 18 requires that at appraisal Bank staff appraisal teams “*should be satisfied that indigenous people have participated meaningfully in the development of the plan as described in para.14(a) (also see para. 15(d)).*”
328. In its Response, Management asserts that the consultants who prepared the original IPDPs “*utilized focus group discussions, participatory rural Appraisal, and in-depth interviews with the villagers to elicit information about community needs and get a general sense of the community’s willingness to participate in the construction of assets and other activities such as training*”³⁴⁶ (emphasis added).
329. In May 1996, responding to criticism from international NGOs who represented the Requesters’ views as well, Management asserted that “[t]he most extensive effort of consultation was undertaken during the preparation of these plans ...”³⁴⁷
330. **The Panel found no evidence of this in the case of the Parej East IPDP. An early 1997 Bank supervision mission acknowledged that there had been virtually no meaningful participation of indigenous people in preparation of the IPDPs. “Only panchayat [village council] members and/or village elders had been consulted with only one meeting in each village.”³⁴⁸ Unlike the IPDPs for some other mines, the original IPDP for Parej East does not describe any consultation or participation.³⁴⁹ During its field visit, the Panel confirmed a lack of consultation in the preparation of the original Parej East IPDP.**

³⁴⁶ Management Response 2001, *supra* note 13, para. 37.

³⁴⁷ Office Memo May 13, 1996, *supra* note 3, para. 6.

³⁴⁸ March 1997 Aide Memoire, para. 14.

³⁴⁹ The addenda which is a standard prepared form used for all 24 mines has the exact same phrase at the beginning of each form stating that the IPDP was prepared using “*techniques like Focus Group Discussion and Participatory Rural Appraisal for evoking informal responses from the presidents.*” The Panel is not certain who supplied the form and language.

331. **In light of Management’s failure to ensure meaningful consultation in the preparation of the original Parej East IPDP, the Panel finds that, Management was not in compliance with paragraphs 14(a) and 18 of OD 4.20.**
332. Paragraph 15(d) of OD 4.20 requires that the contents of an IPDP plan must include a “*Strategy for Local Participation*” stating that: “*Mechanisms should be devised and maintained for participation by indigenous people in decision making throughout project planning, implementation, and evaluation ... Traditional leaders ... should be brought into the planning process, with due concern for ensuring genuine representation of the indigenous population ...*”
333. According to the Requesters, the preparation of the Parej East IPDP was flawed since the structures for community participation reflect a culture, where money power and caste status override democratic participatory functions.³⁵⁰
334. The Panel learned that the Community Development Council at Parej East was set up before XISS started work and does not contain representatives of the people. The Panel was informed that this was because CCL selected the people they wanted to participate. Membership of the Council has not changed since then.³⁵¹
335. The boiler-plate (same for three different mines) section in the original Parej East IPDP states that villagers have in many cases lost faith in the Panchayats (or village councils), but in all its IPDPs the consultant noted that they must be improved and made trustworthy since they control large Government funds. The Panel, however, found no hint of ideas, or any suggestion of efforts made, to determine how the Panchayats might be made more “*trustworthy.*”
336. In its Response, Management maintains that the village specific IPDPs are, in fact, developed through a participatory planning process involving the Village Working Group (VWG) that represents different segments of the village population and contains both women and men.³⁵² As of July 1, 2001, according to Management, “... *of the VWGs in Parej East, nearly 25% of all representatives are women, while two-thirds are from scheduled tribes.*”³⁵³
337. XISS informed the Panel it had gradually succeeded in organizing the VWGs, which are not now dominated by the elite, to participate in annual IPDP preparation, and the Panel was able to confirm this. In any event, whatever the role of the VWGs, Staff pointed out in 1999 that the NGOs engaged by Coal India Ltd. were to

³⁵⁰ Supplement to Request, *supra* note 22, para. 3(e), in Annex 2 of this Report.

³⁵¹ During a field visit, the Panel learned that, in one case, after XISS had criticized CCL in one of its reports, CCL apparently withheld their payment for six months, which is a severe penalty for a poor NGO. To avoid this kind of pressure to conform and behave, XISS felt that they should have continued to be paid by Coal India Ltd. in Kolkata, rather than the local subsidiary, as was in the original agreement for their services.

³⁵² Management Response 2001, *supra* note 13, para. 49.

³⁵³ *Id.*, para. 38.

formulate the annual IPDPs by consulting not just the VWGs but also the local communities.³⁵⁴ Before approval of the CSESMP credit in 1996, Staff pointed out that Coal India Ltd. was taking a significant step in adopting a community development plan, which turned a traditional top-down approach into a bottom-up participatory one. This represented a big change in the way it had previously dealt with social mitigation issues.³⁵⁵ In other words, it presumed a momentous shift in the institutional culture of Coal India Ltd. and its subsidiaries [, perhaps especially the CCL in Parej East].³⁵⁶

338. In 1997, Management told the Board of Executive Directors that “*Even with increased mobilization of Coal India staff and the involvement of NGOs, experience in India and elsewhere shows that the community participation process will not produce tangible results immediately: some time will be needed before the process can be fully internalized by all stakeholders and for it to take root in the day-to-day activities of project implementation at the village level.*”³⁵⁷

339. While some progress has been made, there is still a long way to go. During its visits to five of the eleven IPDP communities, the Panel observed that the content of the annual plans selected for a hamlet are still largely at the discretion of the CCL authorities. Sometimes villagers become aware of them only when they are being implemented. In two hamlets, for example, the Majhithan (the place of the ancestral spirit of the village headman) was given a face-lift, although there was no “*felt need*” for it.

340. In the Panel’s view, recent efforts by Management have resulted in some progress in addressing an enormous challenge. Not only does the challenge presume a massive shift in the institutional culture of the key implementing agents, who have other overriding priorities, it also requires processes of participation and involvement that are new and strange to those who must

³⁵⁴ “*The outcome of the process with the community should include the methodology adopted and the frequency of consultation.*” 1999 Annual Review, CSESMP IPDP Implementation Plans.

³⁵⁵ See also Project Files, October 7, 1996. The Bank social expert involved in the preparation of the project later described some of the implications: “*Previously community development was totally at the discretion of the mine manager. People (local political leaders) would bring petitions forward, and the mine manager would decide what to give and what not to give. The IPDP attempts to address the needs of the weaker sections of society (especially tribals and women), through a participatory planning process at the village level ... This is very new in the context of mine authorities and local communities, and cannot be done by the present staff of Coal India. The facilitating NGOs are brought in to bring about this process and relationship.*”

³⁵⁶ In the same vein, the ESRP noted that “[i]t’s hard to get people to sit down and look at what it is they really need. To get at real needs takes time, consultation and participation.” And they consider that “[t]his chance for establishing a dialogue between CIL staff and villagers was missed” and so what should have resulted in a “*the major difference between the old ‘Community Development’ approach and the IPDP approaches to community development ... largely did not materialize.*”

³⁵⁷ XISS told the Panel that it initially took six months to establish even a bit of rapport with the communities. At first, residents distrusted XISS perceiving them to be a part of CCL. XISS is now satisfied with the level of participation in the preparation of IPDPs and believe it works pretty well because people are not being displaced. The ESRP singles out and praises XISS, for continuing to do good high quality work “*under exceptionally difficult circumstances.*” See ESRP, 2001 Report, *supra* note 1433, p. 40.

relate to the project affected peoples and elements of civil society who represent them.

341. **In Chapter 5 of the original IPDPs prepared by ORG, including that for Parej East, the community development strategy for all three mines in the two different States is described in the exact same terms. Although the strategy has evolved, it is not location specific, nor is it sensitive to the composition, structure and needs of the community. In light of this, the Panel finds that Management is not in compliance with paragraph 15(d) of OD 4.20.**

7.5. Dominance of Infrastructure Activities

342. The Requesters maintain that, compared to losses through the impact of mining, the Parej East IPDP has provided trivial, or marginal facilities such as an unstaffed dispensary building, a road (which means little to people without vehicles), a water tank.³⁵⁸
343. In its Response, Management comments that its planning of annual implementation plans is based on an open menu, where villagers can chose practically any type of development activity they find relevant for their community. They state that no dispensary buildings have been constructed in Parej East under the IPDP program.³⁵⁹
344. At appraisal, Management's consultant criticized the five sample IPDPs for being heavy on infrastructure as opposed to interventions to increase incomes and productivity. He was also concerned about whether financial or other contributions expected from the people themselves were realistic in poor communities.³⁶⁰ Then, shortly after the CSESMP became effective a staff member cautioned that "[t]he

³⁵⁸ Supplement to Request, *supra* note 22, para. 11, in Annex 2 of this Report.

³⁵⁹ See Management Comments 2002, *supra* note 34, para. 47, in Annex 3 of this Report. Noting that civil works activities are implemented through community contracting by the VWG whenever technically feasible, Management refers the reader to Annex 6 of the Response which gives the status of IPDP activities in each of the eleven hamlets.

³⁶⁰ Project Files, March 11, 1996, para. 6. *"In the activity plans of all the mine specific IPDPs the emphasis in terms of the volume of activities and costs is on infrastructure and social assets like schools, clinics and roads rather than in measures which could contribute more directly to increased productivity and incomes. In a situation where the potential beneficiaries are poor, where significant changes in their incomes as a result of project interventions are unlikely, where Government funding of operational and maintenance costs for infrastructure and social assets created under the IPDPs is doubtful, it will be the beneficiaries at more or less their present level of income, who will have to pay the expenses to ensure sustainability if it is to be achieved."* See also September 1996 Notes for the Aide Memoire and BTO, at Annex 1, p. 2. In Coal India Ltd.'s experience people had not maintained the physical assets they had provided. So, as the same staff member points out in September 1996, the issue of ensuring maintenance of assets created under the IPDP was discussed at negotiations of the project and the agreed minutes state that *"Coal India would finance the construction of facilities and community assets under the [IPDPs] and the [PAPs] only if a satisfactory agreement can be reached with the communities concerned about maintenance of these facilities and assets. Coal India would make copies of these agreements available to the Association"* (emphasis added).

Mission would strongly advise against such a [predominance] of physical activities.”³⁶¹

345. In its June 2001 report, however, the ESRP reported that while it was pleased to see that infrastructure development had received increasingly less emphasis as the CSESMP progressed, it noted that “it is infrastructure projects that remain first in the minds of Coal India Ltd. when showing off the achievements of the CSESMP to outsiders. Many still judge IPDP in light of this work.
346. During its visits the Panel team found this to be the case in Parej East. The IPDPs have focused largely on projects for physical development of villages such as the construction of village roads, repair of wells, making of ponds for irrigation and the repair of a community hall. CCL informed the Panel that its plan was gradually to reduce expenditure on infrastructure and to raise it on skill development and capacity building.
347. In its Response, Management points out that the VWGs can serve as contractors for civil works constructed under the plans.³⁶² As for implementation of projects, CCL initially wanted to have the work done through their own contractors, but XISS argued that if the people built facilities themselves they would use and maintain them properly. After Coal India Ltd. intervened, the situation changed but the time lag before CCL pays the villagers for their work is a real problem for them.
348. **During its investigation, the Panel found that many of the IPDP activities in Parej East are disconnected, have little depth, are just marginal and, on the whole, do not reflect a real “felt” need. The Panel is concerned that there has been no concentration on long-term projects such as literacy and numeracy classes, maternal and child health, and self help groups.**
349. Although very late, it is encouraging to note that the 2002 IPDP implementation plans consists exclusively of self-help group capacity building and income generation. The Panel would urge that Management take steps to ensure that this does in fact materialize. It also urges Management to ensure that the planned Post Project Audit determines whether Coal India Ltd. and CCL take steps to continue to improve relations with local civil society groups like CASS and to maintain and strengthen a participatory, bottom-up approach to preventing and ameliorating the environmental and social impacts of their mines on affected peoples, especially the most vulnerable, including the tribals.³⁶³

³⁶¹ See September 1996 Notes for the Aide Memoire and BTO, at Annex 1, p. 2.

³⁶² Management Response 2001, *supra* note 13, para. 39.

³⁶³ It appears that an assessment of the outcome of these development inputs in the different villages will take place in 2002. Terms of Reference for the assessment were prepared in June 2001. The December 2001 Aide Memoire, para. 40, states that “All the annual IPDPs provide an exit strategy involving planning for long-term maintenance of the community assets created under the 4.5 years of the IPDP implementation, and most also involve measures to strengthen CBOs such as VWGs and self-help groups.”

Part Three: Environmental Compliance

Chapter 8

8. Environmental Compliance

350. The Requesters have one main environmental concern, “... *concurrent back filling, and preservation of top soil for the same*” asking “*Where are the top soil dumps?*”³⁶⁴
351. Agriculture is only possible in a thin surface layer of weathered and chemically altered rock fragments enriched by biological action—commonly called top soil. Those dependent upon agriculture value it as an essential resource. Coal miners value more the seams of coal lying under the weathered surface layer and regard topsoil and overburden as a problem to be removed rather than as a valuable resource to be conserved. Nevertheless by careful removal of top soil ahead of mining operations and using it as the final layer of cover on areas backfilled after mining it is possible to have both the open cast extraction of coal and the resumption of agriculture on reclaimed land as the mine is developed.
352. The Requesters raised the question of topsoil in relation to their concern about the restoration of the livelihoods of villagers displaced in Parej East. From 1996 onwards CASS repeatedly urged that mined land in Parej East be reclaimed for use by the PAPs.³⁶⁵ The desirability of this course of action has also been stressed by the project’s ESRP as well as the NGO Minewatch. In April 1997 CASS raised questions about the apparent lack of topsoil removal and the preparation of, and lack of public plans for land reclamation in Parej East. They suggested that “[s]ince land for land is not possible we suggest that after extraction of coal the land be returned to the people after reclamation ... The tribals are not oriented to a market economy so if the land is reclaimed by preserving the top soil it could be made useable for agricultural purposes.”³⁶⁶
353. Bank staff initially told CASS that the issue would have to be debated at national level because of land laws.³⁶⁷ Early in 1999, the Task Leader informed the Requesters that Coal India Ltd. had agreed to undertake land based income generation activities on reclaimed or unused land.³⁶⁸

³⁶⁴ Supplement to Request, *supra* note 22, para. 23, in Annex 2 of this Report.

³⁶⁵ See for example, Request for Inspection, *supra* note 6, Attachment 40, CASS to CMD, CCL, May 18, 1998; Attachment 41, CASS to World Bank, May 19, 1998; Attachment 43, CASS to World Bank, September 1, 1998; Attachment 44, CASS to World Bank, December 12, 1998.

³⁶⁶ Request for Inspection, *supra* note 6, Attachment 28, CASS meeting with World Bank, April 30, 1997.

³⁶⁷ *Ibid.*

³⁶⁸ *Id.*, Attachment 45 para. 1, World Bank to CASS, February 14, 1999.

8.1. Land Reclamation and the Parej East EAP

354. As mitigation of environmental matters is a primary purpose of the project, the CSESMP Credit Agreement and Project Agreement clearly spell out CCL's obligation in Parej East. Article II, Section 2.01 (b) of the Project Agreement states that "*Coal India shall carry out the Environmental Action Plans ... in accordance with the provisions of such Plans, and to that end shall promptly inform the Borrower and the Association of any material deviation in respect of the implementation there*" (emphasis added).
355. In the Sectoral Environmental Impact Assessment, the Five Year EAP for Parej East states that "[o]ut of a total of 114.8 million m³ it is proposed to dump only 11.4 million m³ as external dump and the balance of 103.4 million m³ is to be used for backfilling the voids of decoaled pit."³⁶⁹ The EAP stipulates that "*the external dump is to be completed and reclaimed by the end of the seventh year of mining operation.*"³⁷⁰ A table giving the breakup of the area of the leasehold occupied by facilities at the end of 2000 and post-mining stage at the end of 27 years of life is provided. After five years the pit backfill is listed in hectares as 0 and after 27 years as 122.4 ha.³⁷¹
356. The Land reclamation plan for Parej East, prepared in accordance with Indian law, is in the 1992 EMP (this includes an EIA). The EMP view is that land reclamation may be defined as a process to restore the degraded land to productive, useful, non-polluting and aesthetic uses. Land reclamation does not mean Restoration which means to work the degraded land to pre-mining land use pattern. It goes on to describe the factors to be taken into account in considering different options. It says, that of the non-forest land to be taken by the quarry and overburden (OB) dumpsite, only 62ha is currently (1991) agricultural land. The plan proposed to reclaim the entire external dump. And, out of the 253ha of quarry area, only 122.4ha would be reclaimed and the balance 130.28ha would be left as a water body.
357. The assumed advantage was that, in the area water is scarce, rivers are seasonal and rain fed. "*In this situation creation of a water body will help the local population ... as source for irrigation water, drinking water or for industrial demand.*"³⁷² In the Panel's view this statement is not well founded. The 130ha water body would be tens of meters below the surrounding countryside and separated from it by the vertical rock-faces of the quarry. Considerable and ongoing costs would have to be incurred to pump water from the quarry to make it available for irrigation. And, as the water in the quarry will be in contact with residual coal and coal seams, it will be unsuitable for drinking unless treated. **It is thus highly unlikely that the water**

³⁶⁹ SEIA, Parej East Five Year Environmental Action Plan in EAP, p. 221.

³⁷⁰ Ibid.

³⁷¹ Id., p. 222.

³⁷² See Environmental Management Plan (EMP), Land Reclamation and Plantation Scheme section, para. 6.4(C).

that collects in the void left by the coal mine will in fact be useful to the local community.

358. Of the land to be reclaimed, the EMP dismisses agricultural use because of the poor quality and lack of depth of the topsoil and lack of irrigation water. It was thought unsafe or inadvisable for agriculture to take place concurrently with mining operations. So the EMP proposes utilization of reclaimed land for plantation purposes because it could yield fodders, timber for construction, firewood and fruit for local population, and, in its view, would maintain the ecological balance.³⁷³ The report then goes on to discuss the stages of land reclamation etc. The planned timetable is given for what is to be achieved by the 8th the 16th years and then after mining operations are over.³⁷⁴
359. As Parej East was not a new mine, environmental management pursuant to the 1995 Coal India Ltd. policy was obviously not a part of the Parej East 1991 EMP design, planning and development.
360. In accordance with the time bound action plan in the EMP, the Parej East EAP for the CSESMP period indicates those actions to be completed between 1995-2000, which it includes. It states that the external dump covering 34.9ha will accommodate 11.4 million of overburden. This was to be completed during the year 2000. It required physical reclamation to start from the third year of mine operation 1998 and to be followed by biological reclamation. As per the stipulation of Ministry of Environment and Forests, it required the sloping face to 28 degrees. The entire external dump was to be reclaimed by the seventh year. After this, the backfilled area is to be developed by both physical and biological reclamation. **Finally, the EAP states that “[i]t is proposed to remove the top soil from the quarry and overburden dump site and conserve it for re-use during the biological reclamation stage.”**³⁷⁵

8.1.1. Implementation of the Parej East EAP

361. On backfilling of the decoaled pits required by the EAP, Bank staff informed the Panel that in February 2002, the supervision mission observed that backfilling was occurring in the decoaled parts of the mine quarry.³⁷⁶
362. On topsoil removal, Management’s comments³⁷⁷ reflect the reports of the supervision consultant (DCL) on whom Bank staff relied for environmental implementation information on the 25 mines. Under the header “*Start Implementation Scheme of Soil Storage & Spreading for Biological reclamation,*” DCL reported in December 2000 and March 2001 that some trial removal of topsoil was conducted in April and

³⁷³ Id., para. 6.4.

³⁷⁴ Id., para. 6.18.

³⁷⁵ Environmental Action Plan (EAP), para. 224.

³⁷⁶ Project Files, April 2002.

³⁷⁷ Management Comments 2002, *supra* note 34, para. 88, in Annex 3 of this Report.

May 1998. Then from November 1999 to January 2000 topsoil had been removed by dozer. In July 2000 topsoil removed from the northern edge of the quarry had been spread on the southern end of the internal dump (back-filled mine quarry).³⁷⁸ DCL's January 2002 reports that topsoil removal from the area at the West Bokara boundary end was recovered by EKG shovel in June 2001 then notes that this activity is to be resumed after the OB dump position is decided and some top bench operation starts.³⁷⁹

363. As far as storage of top-soil goes, the staff informed the Panel that the 1998 study undertaken to determine the suitability of top soils used in overburden dump reclamation found that the layer of top soil in some of the mines was quite thin and consequently quite difficult to segregate and collect.³⁸⁰ The Panel observes that this was noted in the Parej East 1991 EMP. In its 2002 comments Management states that “[t]he layer of top soil on the areas that are being excavated for mining is quite thin, and the top soil is currently being spread immediately on back-filled internal dumps.”³⁸¹ **The Panel was not shown nor did it observe any topsoil conservation during its visit to the Parej East Open Pit.**
364. On vegetation of external and internal dumps, the DCL reports note that there is no item for plantation of the internal dump in the EAP but that “*internal and external dump plantation are now treated together.*”³⁸² In July 2001 DCL indicates that 5.2ha of OB dump was re-vegetated in 1995, seven hectares in 1998, that no OB dump area was available for plantation in the 1999 and 2000 monsoon and that there was no proposal for the 2001 monsoon.³⁸³ **Although requested at the site, no documentation or information on the five-year CSESMP mine reclamation program was ever provided to the Panel team.** The DCL reports indicate that monthly inspection of the OB dumps occur, that the old OB dump appears stable and as far as reclamation goes, it is vegetated although there are a few small bare patches on the slope. Stone pack wall was done from July – October 2000. DCL reports the work as given in the EAP as completed.³⁸⁴ The Panel team observed portions of OB slopes devoid of vegetation, and noted that the rehabilitated dumps had all been re-vegetated some years previously. Mine staff, not able to identify the species being used for re-vegetation, informed the Panel that the Forest Department provided the tree species that were used for stabilization.
365. Staff informed the Panel that the 1998 Agricultural Finance Corporation (AFC) soil study identified the need to improve the training of environmental officers and recommended a strengthening of staffing at the mine level with staff trained in the relevant subjects. CASS raised this issue in 1997, noting that Coal India Ltd.

³⁷⁸ DCL Quarterly CSESMP Report, July 2001, p. E-18.

³⁷⁹ Id., January 2002, p. E-17.

³⁸⁰ CSESMP SAR, *supra* note 2, Annex 2.8, Technical Assistance: Terms of Reference, para. 4.

³⁸¹ Management Comments 2002, *supra* note 34, para. 88, in Annex 3 of this Report.

³⁸² DCL Quarterly CSESMP Report, January 2002, p. E-16.

³⁸³ Id., July 2001, p. E-17.

³⁸⁴ Id., p. E-18.

promised to implement a program within 18 months.³⁸⁵ **The Panel found little evidence that mine level staff had training and knowledge of soils and reclamation activities at the Parej East site. Mine rehabilitation appears to be handled as a separate matter to mine planning and operation and staff were unable to provide the Panel with evidence that the eventual configuration and rehabilitation of mined areas were being planned.**³⁸⁶

366. The AFC study also recommended the involvement of project affected people and inhabitants of nearby villages as laborers in the reclamation work and in utilization of reclaimed land for income generation activities. The Bank endorsed these views. Extensive efforts by the Bank to persuade CCL to undertake such activities are described in the income restoration section of this report.

8.2. Observations of the Environmental and Social Review Panel

367. The Panel draws attention to some general observations made by the ESRP, an independent panel appointed under paragraph 13 of OD 4.01. *“The commitment to reclamation of mined land in CIL's Environmental Policy is clear and unambiguous. The policy includes a commitment to: progressive reclamation to achieve a post mine landform and use consistent with the EMP; maximizing backfilling; preservation and re-use of top soil.”*³⁸⁷

368. However, the Panel notes that following the ESRP's May 2000 site visit they concluded that *“[i]mproving reclamation of mined land in the future is not explicitly covered within the ESMP. It is an issue, however, which we believe is fundamental to CIL's future environmental and social performance ... At present: virtually no effort is being made to reclaim mined land so that a productive end use is possible; all the top soil resources of the mined land are being destroyed through burial in overburden dumps; none of the mined land is being returned to the community.”* And stated that *“[t]his situation is not sustainable in the long run ... We have seen little evidence of any fundamental change in attitude to overburden management and reclamation since our first visit in 1997.”*³⁸⁸ This status was confirmed in the ESRP final report.

369. The Panel also observes that the ESRP, in complete agreement with the Requesters, argue persistently throughout their reports for return of mined land to displaced PAPs. Recognizing it was not required under the CSESMP they conclude that *“[w]hat is now needed is a fresh start to reclamation planning and its implementation in all of CIL's open cast projects, based on a genuine commitment*

³⁸⁵ CSESMP SAR, *supra* note 2, para. 2.4.

³⁸⁶ Management Comments 2002, *supra* note 34, para. 90, in Annex 3 of this Report, explains that there have been significant delays in implementing the International Mining Consultants' institutional strengthening plan which Coal India Ltd. has assured will continue beyond the closing date of June 2002.

³⁸⁷ ESRP, 2001 Report, *supra* note 143, p. 35.

³⁸⁸ ESRP, 2000 Report, *supra* note 73, p. 10.

by CIL to returning productive agricultural land to the community being displaced by the expansion of open cast activities.”³⁸⁹

370. The Panel also notes that if annual production at Parej East were two million tons per annum, it would be required, under the Coal India Ltd. policy, to produce an annual operating plan that would address land reclamation.³⁹⁰ But production at Parej East is short of this with an output of 1.75 million tons per annum.
371. The SAR outlines the limitations of land reclamation standards: *“Beyond standard statements in the environmental clearance that the ultimate slopes of overburden should be maintained at a maximum of 28 degrees, topsoil shall be conserved for reclamation use, and land reclamation shall be carried out ‘to make it compatible with the pre-mining land use pattern’, there are no quantitative [standards] that define successful reclamation. Presently, reclamation focuses on wood plantations. It must be noted that the present system – where Coal India must pay the cost of acquiring private lands, fund compensatory reforestation for lost forest lands, carry out reclamation and, after all this, surrender the land back to the Government at no cost – provides no incentive at all, at present coal prices, to the company to do much more than carry out revegetation.”*³⁹¹
372. During site visits, CCL’s Senior Mine Management told the Panel that CCL had no intention to reclaiming the mined areas for post-mining use. Two reasons were given. On one occasion, Senior Mine Management claimed that reclamation was not required by the laws of India and wouldn’t happen until those laws were changed. On another occasion, Mine Management claimed that when mining activities were over the land had to be returned to the Government without any financial compensation. Therefore there was no financial incentive for CCL to increase its production costs by engaging in land reclamation
373. The IMC criticize the present mine planning as not comparable with modern methods of mine planning and *“mitigates against effective reclamation and productive re-use of land.”* IMC notes that all land reclamation is returned to forestry even in predominantly agricultural areas where the presence of good soils would allow the return of land to agricultural use. *“This would also have the social benefits by increasing the amount of land available for resettlement and providing employment opportunities of a kind familiar to rural communities.”* Noting that current practice uses limited backfilling to ground level and leaves large voids at the end of mining, IMC recommends that for planning new mines Coal India Ltd. explore the possibility of utilizing the available backfill to maximize the area restored to productive land uses even if land is reclaimed to lower levels.³⁹²

³⁸⁹ ESRP, 2001 Report, *supra* note 143, p. 84.

³⁹⁰ CSESMP SAR, *supra* note 2, Annex 2.2, Coal India Ltd.’s Corporate Environmental Policy, para. 21.

³⁹¹ *Id.*, Annex 2.1, Environmental Aspects, para. 8.

³⁹² IMC Group Consulting Ltd., Technical and Operational and Management Guidelines, Vol. I: Strengthening of Coal India Ltd. Social and Environmental Management Capability, Final Report, September 2000, Recommendation 2.

374. The Panel notes that the pressing need for reclaimed land in Parej East was not recognized in the EMP for this mine. Having been prepared in 1991, before the CSESMP, the EMP was not designed to meet Coal India Ltd.'s 1995 Environmental Policy end use objectives.
375. **On the basis of the foregoing, the Panel notes that despite persistent efforts by NGO's and the ESRP, the reclamation of mined land to a situation that would allow tribals to reuse land taken for mining, has not happened. Management must have been aware of the lack of action on reclamation at least since the 1997 report of the ESRP quoted above, findings that were repeated in their 2000 and 2001 reports, also quoted above. And it must also have been aware of CCL's position that it had no intention of reclaiming mined areas for post-mining use. At the same time, this does not constitute a formal violation of Annex C of OD 4.01 as far as land reclamation in Parej East is concerned.**³⁹³
376. As reclamation was included in the Coal India Ltd. Environmental Policy for new mines, the Panel fully agrees with and supports the ESRP view: *"Improving reclamation of mined land in the future ... is an issue ... fundamental to CIL's future environmental and social performance."*
377. **The Panel also notes and supports the recommendations made by the IMC in the Report commissioned by Coal India Ltd. entitled Strengthening Social and Environmental Management Capacity. This study formed part of the CSESMP and the Panel thus deems its recommendations to be of particular relevance. The first recommendation³⁹⁴ is that each subsidiary of Coal India Ltd. be required to prepare and implement an Environmental Management Strategy. The second advises that Coal India Ltd. improves planning systems for new mines, with particular reference to land use issues and reinstatement of mined areas to agricultural use.³⁹⁵ In the view of the Panel, the implementation of the IMC recommendations is vital. In addition, because present legal conditions prevent the transfer of land acquired under the CBA Act, the IMC recommends that Coal India Ltd. should lobby the Government to amend existing legislation to allow for the eventual transfer of reclaimed land.**

³⁹³ Annex C relates to environmental mitigation and management plans.

³⁹⁴ IMC Group Consulting Ltd., Technical and Operational and Management Guidelines, Vol. I: Strengthening of Coal India Ltd. Social and Environmental Management Capability, Final Report, September 2000, para. 6.1.1.

³⁹⁵ Ibid. See also IMC Group Consulting Ltd., Technical and Operational and Management Guidelines, Vol. II: Strengthening of Coal India Ltd. Social and Environmental Management Capability, Final Report, September 2000, paras. 3, 4 and 5, Section 2.1.

8.3. Water Quality Management at Parej East

378. The Requesters have a number of complaints about water quality monitoring commitments: “*These shortcoming in implementation stand in spite of the following commitments to review,*”³⁹⁶ and they quote the SAR that says “*the aim of these reviews was to ensure that the coal companies complied with Indian environmental legislation and rules ...*”³⁹⁷

379. Bank Management explains that “[m]onthly environmental monitoring reports are submitted by the Central Mine Planning and Design Institute (CMPDI) on air quality, water quality, and noise level. The monitoring results are further reviewed on a quarterly basis by the supervision consultant, DCL, and by the Bank during each supervision mission. The reports for the quarter ending September 30, 2001 were reviewed by DCL in their report for the quarter ending December 31, 2001. Analysis of drinking water samples indicated that there [were] no bacteria present and all other parameters were in accordance with IS 10500 standards ... All three Bank assisted projects in CCL were seen to have valid consent letters from the State Pollution Control Board during the visit of the supervision consultant, and were seen to have submitted the Environmental Management Plan compliance letters to the regional office of the Ministry of Environment and Forests in time.”³⁹⁸ CCL do therefore appear to be in compliance with Indian environmental legislation and rules. However, the Panel is obliged to point out that the CMPDI, in whose laboratories the analyses are made and from where the monthly environmental monitoring reports emanate is, like CCL, a subsidiary of Coal India Limited.

380. The Panel nevertheless notes that the SAR specified detailed mitigation measures that were required at Parej East. These measures and the Panel’s observations during their site visits to the Parej East Open Pit mine are as follows:

- **No release of untreated water.** The Panel noted that systems have been implemented to prevent the release of untreated mine water and effluent from the maintenance yard. According to the ESRP, all effluent discharges from CSESMP mines meet the required standards except during the Monsoon season.³⁹⁹
- **Recycling and reuse to be maximized.** The Panel noted that systems have been implemented to recycle and reuse mine water and cleaned effluent water from the maintenance yard. According to the ESRP, all CSESMP projects were treating workshop effluent to the required standard.
- **Quarterly monitoring of groundwater levels and quality.** The Panel was shown standard analyses of ground water quality for the host-community well and the hand pump in the Pindra resettlement location. Also for the newly dug well at Prem Nagar. These analyses had been undertaken quarterly by the Coal India Ltd. subsidiary, Central Mine Planning and Design Institute, based in

³⁹⁶ Supplement to Request, *supra* note 22, para. 23(H), in Annex 2 of this Report.

³⁹⁷ CSESMP SAR, *supra* note 2, para. 1.7.

³⁹⁸ Management Comments 2002, *supra* note 34, para. 89, in Annex 3 of this Report.

³⁹⁹ ESRP, 2001 Report, *supra* note 143, p. 27.

Ranchi, and indicated satisfactory water quality. No water analyses for the new wells dug in Pindra village for the new settlers were provided. No evidence of monitoring of ground water levels of any village wells was furnished. Details of DCL's quarterly water quality measurements for October 2000, January 2001 and March 2001 were made available to the Panel. There it is recorded that in December 2000 and March 2001 all water quality parameters, except manganese levels, were within permissible limits. No coliforms were reported from any samples.

- **Water quality kits to be provided at each mine site.** The environmental officer of the Parej East OCP reported that they were not equipped to undertake water analyses and that testing was undertaken by the CMPDI. The quarterly DCL reports make no mention of the need for water sampling kits.

381. **Groundwater level at Lupuntandi.** The Requesters complain that the Company “wants to build a bore well for the employees colony in Lupuntandi, which will affect the water level of the tribal village.”⁴⁰⁰ Management comments that the “employees colony in Lupuntandi” refers to the colony which houses staff from the mines of Parej East, Tapin North, and the Kedla Washery of Bokaro Coalfields on land acquired in the nineteen eighties. Management states further, “[a] tube well to supplement the water supply for the colony was drilled in mid 2000 inside the mine colony. The tube well has a depth of 100 meters and will yield about 3.5 liter per second when operational. Hydro-geological studies undertaken as part of the preparation for the establishment of the tube well do not indicate any adverse impacts on the groundwater table of the surrounding villages ..., including Lupuntandi which is located about 1.5km away from the well site. The tube well, which is not funded under the CSESMP credit, will not have any negative impact on the groundwater table of the surrounding villages.” No evidence of monitoring of ground water levels of village wells was furnished to the Panel. The quarterly DCL Reports make no reference to the monitoring of water levels in wells. It was noted by the Panel that, although sunk, the Lupuntandi tube well, which is in close proximity to the recently dug Prem Nagar resettlement site well, has fortunately not been fitted with a pump and is not in operation.

382. **Sewage treatment in the CCL employee's colony.** The Requesters complain that “sewage from the [CCL] employees colony is discharged into the fields of Lupuntandi.”⁴⁰¹ The quarterly DCL reports indicate that the domestic effluent treatment plant was completed in December 2000 and was running under trial load in March 2002. Parej East OCP staff showed the Panel a modern and efficiently operating sewage treatment facility in the mine employees colony. On the other hand, the Prem Nagar resettlers showed the Panel a mal-functioning sewage pump station close to their site. Here raw sewage was overflowing and being prevented from contaminating agricultural land by a hand-constructed earth berm erected by the villagers.

⁴⁰⁰ Supplement to Request, *supra* note 22, para. 11, in Annex 2 of this Report.

⁴⁰¹ *Id.*, para. 11.

383. In its Response, Management explains that the domestic effluent treatment plant in the mine colony has been funded under the CSESMP Credit. It serves 688 families in the colony. *“The domestic effluent treatment plant replaced the previous disposal of sewage through badly maintained septic tanks, and has thus removed the threat of pollution of the ground water table that was posed by these septic tanks. The treated water from the domestic effluent treatment plant is released into a soak pit lined with concrete and situated inside the mine colony. The CSESMP team observed limited overflow from the soak pit into a small valley leading down to the Bokaro River”*⁴⁰²
384. **The Panel believes that careful monitoring of the domestic sewerage treatment facility serving the CCL employees’ mine colony is required to ensure that malfunctioning equipment does not lead to raw sewage leaking into the three rain fed agricultural plots – cultivated by tribals under claimed customary rights – and causing a health hazard.**

⁴⁰² Management Comments 2002, *supra* note 34, para. 45-46, in Annex 3 of this Report.

Part Four: Disclosure, Consultation and Supervision

Chapter 9

9. Disclosure of Information

385. The Requesters make a number of complaints about disclosure of information. BP 17.50 on disclosure of information and OD 4.01 on Environmental Assessment are clear about what information should be provided to affected people and local NGOs. OD 4.01 states that “*it is necessary that the borrower provide relevant information prior to consultations,*” in order to allow “*meaningful consultation to take place between the borrower and affected groups and local NGOs.*”⁴⁰³ In addition, the policy requires that “*information should be provided in a timely manner and in a form that is meaningful for, and accessible to, the groups being consulted.*”⁴⁰⁴
386. According to OD 4.01, a summary of the project description, its objectives and its potential effects should be provided for initial consultations. Once the EA report has been prepared, “*a summary of its conclusions in a form and language meaningful to the groups being consulted*” should also be provided. In addition, before Project appraisal,⁴⁰⁵ the “*borrower should make the EA report available at some public place accessible to affected groups and local NGOs for their review and comment.*”⁴⁰⁶ As to the Environmental Action Plans (EAPs), the BP states that “*Bank staff encourages Governments*” to make those plans available to local parties who will be affected by its implementation, and to other interested groups including local NGOs.⁴⁰⁷
387. BP 17.50 refers only to the timely disclosure of the EA. However, an internal Memorandum, established that, for purposes of disclosure, this also applies to resettlement plans and the indigenous people development plans.⁴⁰⁸
388. The Bank’s policy on disclosure of information makes the point that the dissemination of information “*to local groups affected by projects supported by the Bank, [including] non-governmental organizations ... is essential for the effective implementation and sustainability of the projects.*”⁴⁰⁹ The policy states “*there is a presumption in favor of disclosure.*”⁴¹⁰

⁴⁰³ OD 4 .01, EA Procedures, Disclosure of Information, para. 21.

⁴⁰⁴ Ibid.

⁴⁰⁵ BP 17.50, Environment-Related Documents, Environmental Assessments, para. 12.

⁴⁰⁶ OD 4 .01, EA Procedures, Disclosure of Information, para. 21.

⁴⁰⁷ BP 17.50, Environment-Related Documents, Environmental Action Plans, para. 14 and note 15.

⁴⁰⁸ See Acting Director, OPR, Memo to Staff Recipients of the Operational Manual (2 December 1993).

The last paragraph of this Memorandum states that “[t]hese modifications to the Bank’s disclosure procedures will be incorporated into BP 17.50, Disclosure of Operational Information when it is revised and reissued.”

⁴⁰⁹ World Bank Policy on Disclosure of Information, January 1994, para. 3.

⁴¹⁰ Id., para. 4.

9.1. Disclosure of EIA, RAPs and IPDPs

389. Prior to appraisal, the GOI and Management agreed to deposit copies of the Sectoral Environmental Impact Assessment (SEIA), the RAPs, the IPDPs, and relevant technical documentation, in the Bank's Public Information Centers in Washington and New Delhi.⁴¹¹ The Project Information Document (PID) was updated and sent to the Bank's Information Center (PIC) in Washington on December 13, 1995.⁴¹²

390. Early in 1996, before the CSESMP credit was granted, the Requesters also asked, inter alia, for “*Schedules of PAPs by name and household head*”; “*Land Acquisition Schedules as per sec. 5 of the RAP*” and “*Compensation Payment schedules.*”⁴¹³ CASS requested that “*copies of all notifications*” be made available in the District Collector Office, in order to allow PAPs to register their grievances in a timely manner.⁴¹⁴ In the Requesters' view, the following information should also have been made available:

- Maps which show the hamlets in relation to mining areas;
- Assets to be acquired from PAPs and the rates of compensation;
- The EIA, EAP, RAP, and IPDP;
- Information regarding environment planning, and monitoring;⁴¹⁵
- Information on the independent monitoring committee and the two level RAP monitoring committee;
- A detailed outline of training programs and other economic rehabilitation in projects;
- The cost-benefit analysis of the project.⁴¹⁶

391. In April 1996, also before the CSESMP credit was granted, the Berne Declaration, an international NGO, took up the issue. Pointing out that “[i]t is relatively easy for international NGOs to get access to project related documents,” it asked the Bank: “*What is being done to provide local NGOs with the same ease of access to information?*”⁴¹⁷ In response, the Bank said that the EMPS, RAPs, and IPDPs, as well as the Coal India Ltd. R&R policy, and the baseline surveys, translated into local languages, were all available to interested parties at subsidiary headquarters.⁴¹⁸

⁴¹¹ Project Files, December 5, 1995.

⁴¹² It does not appear to have been given a number by the PIC, since it is not listed in the official record.

⁴¹³ Request for Inspection, *supra* note 6, Attachment 3, CASS to the GM East Parej Project, February 1996; Attachment 4, CASS to World Bank, February 1996.

⁴¹⁴ Id., Attachment 6 para. 14.3, CASS/JJM to World Bank: Report on the East Parej OCP, dated April 20, 1996.

⁴¹⁵ Id., Attachment 12 para. (A)2, The Berne Declaration to World Bank, NGO benchmarks for the World Bank's India Coal Sector Projects, dated September 13, 1996. The Berne Declaration took up CASS's requests for information. It reiterated the list of documents that it reckoned should be at PAPs' disposal. When referring to information on environment planning and monitoring, it specified quarterly monitoring reports for noise, air and water pollution, reclamation plan etc.

⁴¹⁶ Id., Attachment 6 para. 14.8, CASS/JJM to World Bank: Report on the East Parej OCP, dated April 20, 1996.

⁴¹⁷ Id., Attachment 7 para. 19, The Berne Declaration, Mainstreaming Sustainability? The World Bank and the Rehabilitation of the Indian Coal Sector, April 26, 1996.

⁴¹⁸ Office Memo May 13, 1996, *supra* note 3, para. 24.

The Berne Declaration repeated its request again in September 1996, and February 1997 and, on each occasion, Management stated that the PICs had been established at the mine sites and that the all information, including the ESRP reports (as soon as was available), either was or would be placed in the PICs.⁴¹⁹

392. Based on its interviews, the Panel found no evidence that the SEIA together with the Parej East EAP, the original RAP and IPDP were made publicly available to PAPs and local NGOs in Parej East prior to approval of the CSESMP. The Panel notes that the appraisal mission took place in December 1995. Shortly after appraisal, the second attachment to the Request for Inspection shows CASS asking CCL for a copy of the RAP, not for the first time.⁴²⁰ Finally, CASS obtained an “unofficial” photocopy from a CCL office. Later, CASS obtained the Parej East IPDP from the Bank Information Center, a Washington-based NGO.⁴²¹
393. **The Panel found no evidence that the Sectoral Environmental Impact Assessment, which contained the Parej East five-year Environmental Action Plan, was made “available at some public place” in Parej East “accessible to affected groups and local NGOs for their review and comment.”**
394. **Based on its review of the documentation and interviews, the Panel notes that while Management ensured that the SEIA and the Parej East EAP and RAP were placed in the Bank’s PICs in Washington and New Delhi before appraisal, it failed to ensure that the reports were available in Parej East at a public place accessible to affected groups and local NGOs for their review and comment, not even a Summary of their conclusions “in a form and language meaningful to the groups being consulted,” as required by OD 4.01/BP 17.50. In light of this, the Panel finds that Management was not in compliance with paragraph 21 of OD 4.01 and paragraph 12 of BP 17.50 in respect of disclosure.**

9.2. Parej East Public Information Center

395. Mindful that “[t]he responsibility of the PAPs having full information about their future lies with the Project Officials, not with the PAPs,”⁴²² CASS repeatedly demanded, from early 1996, that all information related to the CSESMP project be made available to the people, and that the “*contact person between CCL and the PAPs must genuinely represent the PAPs and must not be those who previously held*

⁴¹⁹ See Request for Inspection, *supra* note 6, Attachment 12, The Berne Declaration to World Bank, NGO benchmarks for the World Bank’s India Coal Sector Projects, dated September 13, 1996; Attachment 37, Bosshard to Bauer, dated June 12, 1997; and Office Memo May 7, 1997, Acting Secretary to Board of Executive Directors, Issue 3, Management Response to The Berne Declaration, Outstanding Issues, February 7, 1997.

⁴²⁰ *Id.*, Attachment 2, CASS to CCL, February 13, 1996.

⁴²¹ CASS also received the Project Information Document late in 1995 from the Washington NGO Bank Information Center.

⁴²² Request for Inspection, *supra* note 6, Attachment 6 para. 14.6, CASS/JJM to World Bank: Report on the East Parej OCP, dated April 20, 1996. See also *Id.*, Attachment 3, CASS to the GM East Parej Project, February 1996; Attachment 4, CASS to World Bank, February 1996.

*positions of domination over them.*⁴²³ In April 1996, CASS asked for an information office within easy access of the PAPs, or NGOs representing them, so they could have easy access to detailed information.⁴²⁴

396. In November 1995, the PID stated that Coal India Ltd. was establishing PICs at its headquarters and at the subsidiaries. According to the PID, the public could easily access the Resettlement and Rehabilitation policy in local languages at the Centers, as well as documentation and information related to the Sectoral EA, including, inter alia, the EMPs, the EAPs the RAPs and the Coal India Ltd. corporate IPDP.⁴²⁵
397. From an examination of the records available, it appears that the first mention of a PIC in Parej East is in February 1997 when Staff reported that one was installed in the office of the Parej East R&R officer. Staff also reported that it was agreed that the office photocopier could be used to issue photocopies of the RAPs, IPDPs, etc. “(for a cost fee) upon request by PAPs, NGOs and other interested parties.”⁴²⁶ Given that years have past, the Panel is unable to ascertain whether the documents cited in the PID were placed at the Parej East PIC when it was first set up.
398. In its Response, Management states that Public Information Centers have been established in all 25 mines covered by the CSESMP, including Parej East. Management explains that the PIC in Parej East “*is located in the same building as the office of the Community Development/R&R Officer ... and is generally accessible on a daily basis.*”⁴²⁷ The Response provides a list of documents currently available at the Parej East PCI.
399. However, the Requesters’ position was that “[t]he information provided [in the Public Information Center] *is rather inadequate, many more documents should be available.*”⁴²⁸
400. In response to CASS’s request to obtain a copy of the Bank’s Midterm Review Report and of the Environmental and Social Review Panel (ESRP) Reports,⁴²⁹ Management explains that “*the release of communication between the Bank and CIL, such as the midterm review report and those by the [ESRP], funded under the IDA credit could only be released at the discretion of CIL*”⁴³⁰ (emphasis added).

⁴²³ Id., Attachment 6 para. 14.4, CASS/JJM to World Bank: Report on the East Parej OCP, dated April 20, 1996.

⁴²⁴ Id., para. 14.7.

⁴²⁵ Project Information Document, November 30, 1995, para. 18.

⁴²⁶ Project Files, April 10, 1997.

⁴²⁷ Management Response 2001, *supra* note 13, para. 90.

⁴²⁸ Supplement to Request, *supra* note 22, para. 20, in Annex 2 of this Report.

⁴²⁹ See for example, Request for Inspection, *supra* note 6, Attachment 44 para. 4, CASS to World Bank, December 12, 1998.

⁴³⁰ Management Response 2001, *supra* note 13, para. 91. See also Request for Inspection, *supra* note 5, Attachment 45 para. 6, World Bank to CASS, February 14, 1999; Attachment 47 para. 4, World Bank to CASS, September 8, 1999.

401. As to the treatment of the PAPs at the Public Information Center, the Requesters assert that “[r]equests are commonly met by ‘not available at the moment, come another time’.”⁴³¹ In its Response, Management explains the good relationship they observed between the CD/R&R officer and the PAPs.
402. The Panel's visit to the Public Information Center indicated that it is more a repository of selected formal documents than a Center that seeks to disseminate information to affected people. The Panel found that not all documents pertaining to the Project are available. A copy of the 1995 Sectoral Environmental Report together with the Environmental Action Plan for Parej East was not available to the Panel team, and earlier versions (1994 to 1999) of the RAP or IPDP were also not available.⁴³²
403. Documents may only be consulted when the supervisory staff are present and no provision is made for documents to be studied in private or photo-copied. The Panel observed that, despite the low levels of literacy among PAPs, all information in the Center is in technical written documents. The Panel was surprised to see no pamphlets, or simplified informational materials, or sketches, photographs or visual materials to depict the Project, its sequence, and effect on people. The staff of the Center indicated, in response to a question, that they had not and do not give popular talks to help affected villagers understand what is being proposed for the Project.
404. In addition to selected formal Project documents, the Center holds registers of all the public meetings pertaining to the Project that have been held, as well as written staff notes (headed ‘minutes’, but which are not verified or authenticated by those who attended the meetings). Some notes are written in English but most are in Hindi. Lists of the persons attending the meetings constituted the bulk of the entries.⁴³³
405. A third form of documentation held in the Center is a register of grievances. Perusal of the entries recorded in English suggested that this register appears more like a record of visitors: full details of complainants are recorded but the nature of the grievance as well as proposed actions are sketchy.
406. In terms of accessibility of the Center, and availability of Project Officers towards the PAPs, during its visit the Panel noted that the Center is located in the same room as the office of the R&R officer. Clearly, to be present at all times during office

⁴³¹ Supplement to Request, *supra* note 22, para. 20, in Annex 2 of this Report.

⁴³² Other than the mine plan no drawings were available showing planned rehabilitation and landscaping of either the over burden dumps or the eventual pit. No document on the physical reclamation plan for the Parej East OCP is available.

⁴³³ Despite the important role they play as custodians of State land, the Forestry Department's name did not appear in any of the lists perused, in response to Panel team questioning the center's staff confirmed that the Forestry Department was not regarded as an essential role player and did not attend meetings pertaining to the project.

hours to supply information is an additional responsibility that can often conflict with his principal duties.

407. Unfortunately, there was a change in attitude when the Panel team was joined by a member of the NGO requesting inspection. The Panel observed a certain level of aggression and arrogance and the questions posed were dismissed curtly and with disdain. The tone and mood of this part of the meeting, with an NGO present, was hostile and unpleasant. Based on its own observations, the Panel team is concerned about the reaction there might be towards tribal people attempting to obtain information from the Center.
408. **In 2002, it is obviously not possible to verify what precise documents were or were not available in the Parej East Center in 1996/97. In the Panel's view, however, the location of the Center in the office of the R&R Officer, in the gated CCL mine Headquarters' compound, does nothing to facilitate information being provided "... in a timely manner and in a form that is meaningful for, and accessible to, the groups being consulted," as required by paragraph 21 of OD 4.01. On the contrary, for poor, vulnerable and now dependent people, it is clearly intimidating to approach an office in that location, let alone walk in and freely request information, register complaints and engage in dialogue. In addition, the information being provided in 2001 was largely technical and inaccessible to project affected people and without summaries "... of its conclusions in a form and language meaningful to the groups being consulted," as required by OD 4.01. Management could and should have been aware of this.**
409. **In light of this, the Panel finds Management not in compliance with paragraph 21 of OD 4.01 and paragraph 12 of BP 17.50.**

Chapter 10

10. Consultations

410. Paragraph 19 of OD 4.01 sets out requirements for consultations as follows: “*The Bank expects the borrowers to take the views of affected groups and local NGOs fully into account in project design and implementation and in particular the preparation of EAs.*”
411. The Requesters, both in their Request for Inspection, in prior communications to the Bank, and in subsequent communications to the Panel, allege lack of consultation with the PAPs in both project preparation and implementation. This they consider as the underlying reason for the fundamental flaws in original CSESMP plans and in the failures during implementation.⁴³⁴ In addition, the Requesters complain that the Bank has not reacted to their complaints.
412. In its Response, Management asserts that consultations have been held with “*both PAPs and NGOs during the course of project preparation and implementation.*”⁴³⁵ As far as project preparation goes, the Panel notes that the November 1995 PID stated that all required consultations for the Sectoral Environmental Impact Assessment (SEIA), Resettlement Action Plans (RAPs) and Indigenous People Development Plans (IPDPs) have taken place. In its Staff Appraisal Report (SAR) for the CSESMP, Management maintained that “*the most significant contribution that arose out of the Association’s [IDA] involvement with this project is the extensive use of the consultative process with project-affected people in the preparation of various action plans.*”⁴³⁶
413. This chapter will examine consultations with PAPs in Parej East on the preparation of the SEIA and the EAP as well as consultations on both the preparation and implementation of the RAP for Parej East. Finally the chapter will discuss consultations with local NGOs. Consultation on, and the participation process for, the IPDP for Parej East has been discussed in Chapter 7 on the IPDP.

⁴³⁴ Request for Inspection, *supra* note 6, para. 4(c). See also Supplement to Request, *supra* note 22, para. 20, in Annex 2 of this Report; Request for Inspection, *supra* note 5, Attachment 5 para. 1.0, CASS/JJM to the World Bank: comments on the CSESMP, dated February 25, 1996; Id., Attachment 6 para. 14, CASS/JJM to the World Bank: Report on the East Parej OCP, dated April 20, 1996; Id., Attachment 36, Bosshard to Wolfensohn, dated May 20, 1997.

⁴³⁵ Management Response 2001, *supra* note 13, para. 30.

⁴³⁶ CSESMP SAR, *supra* note 2, para. 1.9.

10.1. Environmental Assessment and Environmental Action Plan

414. Paragraph 20 of OD 4.01 specifies that “*consultations should occur at least at the following two stages of [the] EA process (a) shortly after the EA category has been assigned, and (b) once a draft EA has been prepared.*”
415. The Requesters assert that the PAPs in Parej East were not consulted on the preparation of the SEIA or the EAP for Parej East, noting that the PAPs “*have an interest in a full and proper assessment and mitigation of the environmental risks associated with this project.*”⁴³⁷
416. In its Response, Management asserts that consultations required by OD 4.01 were held on the draft SEIA and EAPs for the 25 mines and that the latter were finalized after considering the suggestions and recommendations made during these consultations.⁴³⁸
417. What became quickly apparent to the Panel when looking at the Bank’s records was that consultation was not mandatory under Indian environmental regulations. Coal India Ltd. reminded Management of this in January 1995. Access for inspection of, and public display of, a project’s environmental documents was all that was required.⁴³⁹
418. This led to a debate in the Bank about how to deal with Coal India Ltd.’s view of consultations on the draft SEIA and EAPs. During the debate an interesting table was prepared setting out the options discussed, ranging from adopting the Coal India Ltd. approach, i.e. “*no consultations, only disclosure of information,*” to insisting on the requirements of OD 4.01, along with the advantages and disadvantages of each. Two of the more interesting disadvantages of adopting the Coal India Ltd. approach were “[p]ossible criticism by NGO that the Bank does not follow its own ODs,” and that “*an inspection panel may be enacted.*” It appears that the issue was resolved at the May 1995 Loan Committee meeting when the Vice President and General Counsel demanded strict compliance with the OD, stressing that the Bank must be satisfied that “*the process of consultation had to be adequately documented.*”⁴⁴⁰
419. Management states that a workshop on the EA was held in Kolkata in May 1995, in which Parej East PAPs were represented by NGOs who participated. The Requesters maintain that the NGOs at the workshop were not from the Parej East area and could not possibly represent the PAPs there.⁴⁴¹ The Panel confirms that one NGO representative was from the H.D. Hesalong mine but that there was no NGO from Parej East. In response to NGOs’ questions on why the May 1995 workshop

⁴³⁷ Request for Inspection, *supra* note 6, p. 1 para 3.

⁴³⁸ Management Response 2001, *supra* note 13, para. 31.

⁴³⁹ Project Files, January 27, 1995.

⁴⁴⁰ Minutes of the Loan Committee Meeting held on May 16, 1995, p. 1.

⁴⁴¹ CASS to Inspection Panel, December 10, 2001.

was organized in Kolkata and not in the project areas where more project affected people could attend, Management responded that while “[c]onsultations with project-affected people take place primarily at the mine sites ... The logistics to organize these workshops at 25 mines would be formidable.”⁴⁴²

420. The “draft” EA is dated May 1995. During interviews at Parej East, the Panel was told that a meeting had been held at Parej East in July 1995 with a core of pre-selected PAPs. The Panel was also told that it was not a two way process. Information was simply delivered.
421. In response to questions from international NGOs and the Requesters, Management responded that “[i]n preparing these [EAPs], Coal India has made an effort to consult with all project-affected people, their representatives and local NGOs.”⁴⁴³ And that “[a]t each of the mines included under the project, mine managers held meetings with project-affected people in which they explained the program of mitigating actions that would be undertaken in the course of implementation of Environmental Action Plans”⁴⁴⁴ (emphasis added). **Thus the July 1995 meeting in Parej East was, as the Panel was told, an information meeting. While information meetings may be a preliminary to “informed” consultations, they are not consultations.**
422. The SAR describes the scope and process of consultations that had taken place during preparation.⁴⁴⁵ The Panel notes that the SAR lists the subsidiaries where meetings or consultations took place. CCL was not one of them.⁴⁴⁶
423. Later, the independent ESRP found that there was a general lack of ownership of EAPs at the Project level. It stated that: “*Although CIL has indicated to the [ESRP] that the EAPs were developed in consultation with the Officers at the Project level, it is abundantly clear that the process of consultation that was followed was not effective, and the resulting EAP were effectively the product of a strongly top-down, centralized approach. This centralized command and control model was mirrored in the way the ESMP was supervised and monitored by the WBPD [World Bank Project Dept. of CIL] during its implementation.*”⁴⁴⁷
424. **The Panel finds no evidence of, and no documentation of, meaningful consultations on the Sectoral Environmental Impact Assessment and the Environmental Action Plan with the PAPs or local NGOs in Parej East, as required under OD 4.01. Moreover, from the debate that took place in the Bank on Coal India Ltd.’s approach, it is clear that Management was aware of this in early 1995.**

⁴⁴² Office Memo May 13, 1996, *supra* note 3, para. 27.

⁴⁴³ *Id.*, para. 13.

⁴⁴⁴ *Id.*, para. 10.

⁴⁴⁵ CSSESMP SAR, *supra* note 2, para. 2.24 to 2.26.

⁴⁴⁶ *Id.*, Annex 2.6, para. 11.

⁴⁴⁷ ESRP, 2001 Report, *supra* note 1433, p. 14.

425. **In light of this, the Panel finds that Management was not in compliance with paragraph 20 of OD 4.01 concerning consultations in Parej East on the preparation of the Sectoral Environmental Impact Assessment and the Parej East Environmental Action Plan.**

10.2. Preparation of Resettlement Action Plan

426. Paragraph 8 of OD 4.30 states that the *“involvement of involuntary resettlers and hosts in planning prior to the move is critical. Initial resistance to the idea of involuntary resettlement is to be expected. To obtain cooperation, participation and feedback, the affected hosts and resettlers need to be systematically informed and consulted during preparation of the resettlement plan about their options and rights ... these steps can be taken directly or through formal and informal leaders and representatives.”* Coal India Ltd.’s policy states that once the baseline survey is done, *“the RAP will be formulated in consultation with the PAPs ...”*⁴⁴⁸

427. In its Response, Management says that the nine NGOs engaged to carry out *“Baseline Surveys of the affected populations in the 14 mines with land acquisition, conducted an extensive house to house census with a structured questionnaire to elicit the current socio-economic status of the affected people and receive input on each individual’s preferred means of economic rehabilitation if jobs in the mines were not available.”* The original RAPs were prepared on the basis of this.⁴⁴⁹

428. The Baseline Survey for Parej East was prepared in mid1994 by the XISS, and the RAP shortly after, in August 1994, by CMPDI, consultants to CCL.

429. Management correctly indicates that the PAPs were interviewed by XISS during the conduct of the Baseline Survey in Parej East. Prepared about a month after the Baseline Survey, CMPDI, through the RAP, states that CCL maintained close liaison with the PAPs during preparation of the RAP, and that they *were “associated with”* preparation of the land schedule, the schedule for compensation for land and other immovable properties, formulation of the scheme for the resettlement site, including site selection, and identification of rehabilitation schemes for PAPs.⁴⁵⁰ On the other hand, according to the Baseline Survey, 95 percent of PAPs did not even know where the Pindra resettlement site was. Yet, in the RAP, CMPDI claims that the site was mutually acceptable to all the PAPs.⁴⁵¹ **Based on a review of the records and interviews in the field, the Panel found no evidence to indicate**

⁴⁴⁸ CSESMP SAR, *supra* note 2, Annex 2.3, Coal India Ltd.’s Resettlement and Rehabilitation Policy, para. 23.

⁴⁴⁹ Management Response 2001, *supra* note 13, para. 35.

⁴⁵⁰ RAP, *supra* note 74, para. 4.6.2.

⁴⁵¹ *Id.*, para. 7.2.

that, apart from being interviewed for the Baseline Survey, the PAPs were consulted in the preparation of the Parej East RAP itself.⁴⁵²

430. OD 4.30 paragraph 9 states that “[h]ost communities and local governments should be informed and consulted.” The RAP does not indicate that there were any consultations with the host community on how the then anticipated settlement of 257 PAFs in the adjacent site at Pindra would impact on them or their economic base. Nor does it indicate their attitude towards sharing the forest with a huge influx of outsiders.⁴⁵³ **During its investigation, the Panel confirmed that there were, in fact, no consultations with the host community even during the Baseline Survey phase.**
431. Management itself acknowledged that the consultation process had been imperfect when, in mid-1997, it had to report to the Board on the status of implementation of the CSESMP prior to negotiations for the CSRP. In general, Management admitted that “[t]he lack of meaningful consultations between Coal India and its subsidiaries with project affected people and other stakeholders has lead to several difficult situations.” Management cited one of the Parej East problems, stating that it resulted from this: “At Parej East coal mine of the Central Coalfields Ltd. (CCL), a conflict developed between CCL and project-affected people which necessitated police and court interventions. Project-affected people refused to move from the land acquired by CCL because they were not consulted on the location and site design for the resettlement village”⁴⁵⁴ (emphasis added).
432. **The Panel recognizes that Management ensured that the PAPs in Parej East were interviewed during the process of the Baseline Survey preparation and, to the extent that this provided inputs for the RAP, finds that Management was in compliance with paragraph 8 of OD 4.30.**
433. **But, beyond these interviews, there is nothing to indicate that the PAPs in Parej East were “systematically informed and consulted during preparation of the resettlement plan about their options and rights.” In light of this, the Panel finds that Management was not in compliance with paragraph 8 of OD 4.30.**
434. **The evidence is clear that the host community for the Pindra resettlement site was not consulted during project preparation and, in light of this, the Panel finds that Management was not in compliance with paragraph 9 of OD 4.30.**

⁴⁵² The Parej East RAP was prepared by CCLs’ design and planning consultant, the same consultant who surveyed and prepared the plan for the resettlement site.

⁴⁵³ RAP, *supra* note 74, para. 7.7.

⁴⁵⁴ See Staff Appraisal Report, India Coal Sector Rehabilitation Project, Report No. 16473, Annex 4.3, Status of Implementation Note, June 9, 1997, para. 11-12.

10.3. Implementation of Resettlement Action Plan

435. In its Response, Management lists 54 meetings that project authorities held, between April 1995 and May 2001, with Parej East PAPs and provides detailed information on those meetings.⁴⁵⁵ Management claims that the consultations held after the RAP was prepared were also “*used as a forum by CCL to disseminate project related information such as CIL’s R&R Policy, infrastructure development of the resettlement site, and the commencement of a survey to determine appropriate income generation option.*”⁴⁵⁶ (emphasis added). **The Panel notes that these consultations should have concerned the Parej East RAP that laid out the plan and entitlements for Parej East R&R, not the Coal India Ltd. R&R policy.**
436. Management reports positive outcomes of the early consultations. “*One of the outcomes of these consultations was that PAPs were able to choose their plot in the resettlement site and the self-employment training option which appealed to them. Additionally, a committee was constituted to assess the claims of damage due to blasting. Continued dialogue between project officials and affected persons brought about an increase in the resettlement plot size from the 100 sq. meters provided for under CIL’s R&R Policy to 200 sq. meters. Other consultations led to the selection of the Prem Nagar resettlement site at the request of the PAFs from Turi Tola ...*”⁴⁵⁷
437. In reaction, the Requesters consider it a “*misrepresentation*” to imply that the consultations held were to “*discuss the issues raised by the PAPs.*” They say the meetings “*did not move beyond giving information about, and stressing implementation of, CIL’s R&R policy which they had to follow.*”⁴⁵⁸
438. Lack of “*meaningful consultation*” in Parej East during early implementation was noted by the ESRP. The ESRP reported their 1997 observations on the Turi Tola PAPs’ resistance to relocation. They said that project officials had never sat down with the people in their hamlet to discuss the situation. In order to resolve the problem, the ESRP recommended that CCL officials change their approach and also involve CASS to help.⁴⁵⁹

⁴⁵⁵ Management Response 2001, *supra* note 13, para. 33. According to Management topics included “(i) increase in plot size and allotment of sites by caste group; (ii) damage of homes due to blasting; (iii) Environmental Assessment; (iv) land compensation; (v) mine jobs; and (vi) income generation.”

⁴⁵⁶ *Ibid.*

⁴⁵⁷ *Id.*, para. 33.

⁴⁵⁸ CASS to Inspection Panel, December 10, 2001. More specifically about the outcomes claimed by Management, in paragraph 34 of its Response, CASS states that “[i]t is true Prem Nagar was granted as an alternative resettlement site, but it is a misrepresentation to say that this is the ‘result of consultation’; it was a result of agreement reached in Hazaribag civil court; ‘Claims of damage due to blasting’ was not the result of ‘consultations’, but of the PAPs filing a case to the Director General of Mines Safety (papers of which are on record); ‘Increase in the size of resettlement plot.’ True there was an increase to 200 sq. m., but as the PAPs were requesting 400 sq. m. it is misrepresentation to imply that consultations brought satisfactory results.”

⁴⁵⁹ ESRP, 1997 Report, *supra* note 91, p. 52.

439. Systematic consultation with the PAPs began towards mid-1997 when formulation of the annual RAP implementation plan was delegated by Coal India Ltd. to the NGO (XISS), which was to facilitate PAP participation in the process. The Panel was told that, at first, PAPs resisted communication with XISS perceiving them to represent CCL. XISS overcame this, to some extent, by using an innovative way of engaging those to be displaced. The ESRP praised this approach and recommended that CCL should document it and have it applied in other mines.⁴⁶⁰
440. **The Panel notes that, after the RAP was prepared, consultation with PAPs and PAP participation in the resettlement process, was to be undertaken entirely through the implementing NGO, but also observes that in Parej East the implementing NGO, XISS, set up an office in Parej East only in July 1997. During the three years that elapsed since the RAP had been prepared there is scant evidence of consultations on planning for displacement, except occasionally at the insistence of CASS. The Panel finds, however, that once XISS began work, there was systematic consultation and involvement of the PAPs, on behalf of CCL, and therefore finds Management in compliance with paragraph 8 of OD 4.30.**

10.4. Consultation with Parej East NGOs

441. The Requesters assert that their right to participation and consultation, during the project preparation and implementation, “*was effectively denied ...*”⁴⁶¹ They maintain that they received “*polite and pro-active responses*” to their letters, “*but in time came to realize that these were only serving to wall paper failures on ground which were not being addressed.*”⁴⁶²
442. In its 2001 Response, Management contends that the supervision team had “*significant interaction with a number of local and international NGOs*” throughout the Project Preparation and Implementation. It claims that, “*from early 1996 frequent communication began between the supervision team and CASS.*”⁴⁶³
443. As for consultation with local NGOs during preparation of the Parej East RAP, CCL’s consultant stated that there were no [relevant] NGOs in Parej East for them to consult with. It should be noted that CASS appears to have begun to voice concerns for the PAPs from Turi Tola and Borwa Tola, in 1996, about a year after the RAP was prepared. It voiced its concerns directly to the project authorities and the Bank in its February and April 1996 reports that were delivered before approval of the CSESMP in May 1996.

⁴⁶⁰ Id., p. 50.

⁴⁶¹ Request for Inspection, *supra* note 6, p. 1 para 3.

⁴⁶² Id., p.4 para 8.

⁴⁶³ Management Response 2001, *supra* note 13, para. 42.

444. The Panel found that, in 1996, Management did not consider that it was the Bank's responsibility to listen directly to local NGOs or PAPs.⁴⁶⁴ However, the records show that Management did respond to the international NGOs, which had actually taken up and raised the complaints made by CASS and other Indian NGOs. In its response to a letter from a group of international NGOs in 1996, Management admitted that it had ignored CASS's suggestions during Project Preparation on the grounds that "[i]t is Coal India's concern to consult with the project-affected people, their representative and NGOs directly. Coal India informed us that they consulted extensively with the St. Xavier Institute [XISS]."⁴⁶⁵
445. When a Bank staff social scientist from the New Delhi office visited in April 1997 he was concerned to discover that CASS letters to the Bank and project authorities, during the previous six months, had been ignored. In May 1997, Washington Bank staff agreed to ensure consultation with local NGOs on the CSESMP Implementation Note before submitting it to the Executive Directors. In fact, however, the Parej East NGOs received just two days notice for the consultation meeting in New Delhi and, given such short notice, it was physically impossible for them to arrange to attend. Following this event, the international NGOs questioned Management's credibility and addressed the issue to the Bank President, claiming that "*the pressure to rapidly approve the CSRP undermines attempts to consult the Indian NGO community.*"⁴⁶⁶ The President response explained that the process of local NGO consultation was satisfied through consulting the NGOs who had been employed to facilitate the CSESMP implementation and formulate annual RAPs and IPDPs.⁴⁶⁷ In the case of Parej East, therefore, Management was satisfied by the fact that XISS had been consulted.
446. **The Panel notes Management's view that consultation with local NGOs was to be undertaken exclusively with the implementing NGOs, but also observes that in Parej East the implementing NGO, XISS (employed only in March 1997), was located in Ranchi, and could not be considered a local NGO until it set up an office in Parej East only in July 1997. It is evident therefore that, prior to mid 1997, any consultation the borrower may have had with XISS did not constitute consultation with a local Parej East NGO. It is also worth noting that since XISS was contracted by CCL it was accountable to the subsidiary that employed it. In the Panel's view, it is at best not clear how this arrangement could serve to discharge Management's obligation to ensure consultation with local NGOs acting on behalf of the PAPs, rather than on behalf of CCL. At worst, it places the implementing NGO in a serious conflict of interest, the results of which the Panel itself had an opportunity to witness.**

⁴⁶⁴ Request for Inspection, *supra* note 6, Attachment 11, 'Memorandum' on World Bank field visit, dated June 9, 1996.

⁴⁶⁵ Office Memo May 13, 1996, *supra* note 3, para. 28.

⁴⁶⁶ Request for Inspection, *supra* note 6, Attachment 36 p.3, Bosshard to Wolfensohn, dated May 20, 1997.

⁴⁶⁷ The President Response to Peter Bosshard, June 4, 1997, p. 2.

447. **The Panel notes, however, that Bank staff did meet with CASS in the field at least once in 1996 and twice in 1997. Beginning in early 1998 and through to February 2000, the supervision team did, after consultation with Coal India Ltd., systematically respond to CASS letters, and met with the NGO several times in the field to discuss issues. However, this ended in March 2000 and since then, the Panel understands there has been no communication between the Bank and CASS.**
448. **The Panel therefore finds that, before 1998 and after 2000, Management did not ensure that the views of “local NGOs” in Parej East were taken “fully into account in the project design and implementation” as suggested by paragraph 19 of OD 4.01, in particular with regard to implementation of the RAP. In this respect, Management was not in compliance with paragraph 19 of OD 4.01.**

Chapter 11

11. Supervision

449. OD 13.05 on Bank supervision notes that “[p]roject Supervision is one of the Bank’s most important activities.” The main purposes of the policy are “(a) to ensure that the borrower implements the project with due diligence ... and in conformity with the loan agreement; (b) to identify problems promptly as they arise during implementation and help the borrower resolve them, and to modify as necessary the project concept and design as the project evolves during implementation or as circumstances change ...; (c) to take timely action to cancel a project if its continuation is no longer justified , particularly if it can no longer be expected to achieve the desired development objectives ...; (e) to use the experience gained to improve the design of future projects, sector and country strategies, and policies ...”⁴⁶⁸ OD 13.05 adds that the Bank carries out these supervision activities by, inter alia, studying periodic reports and correspondence from project authorities, and by visiting the borrowers and the project sites.
450. OD 4.30 paragraph 31 on involuntary resettlement takes supervision of implementation very seriously. Recognizing that sporadic supervision in implementation could jeopardize the success of resettlement, it states that “[r]esettlement components should be supervised throughout implementation.” Likewise, OD 4.20 paragraph 19 specifies that the site visits conducted by Task Managers and specialists are essential. It further stipulates that “[m]id term and final evaluations should assess progress and recommend corrective actions when necessary.”
451. The Requesters, allege that “[t]he Bank has failed to adequately supervise the CSESMP project as guaranteed when it undertook the project.”⁴⁶⁹
452. In its Response, Management maintains that it conducted an intense supervision effort. It provides supporting data, including a list of the supervision missions undertaken (in Annex 2). It also provides an Annex (No. 3) showing “Issues Raised [with CCL] in Supervision Missions in Parej East.” According to the Response, supervision missions visited the Parej East mine 18 times from 1996 through June 2001.⁴⁷⁰ Management points out that, in addition to Bank supervision missions, a Project Implementation and Monitoring Consultant firm, consisting of two environmentalists and two social scientists, has been supervising all project mines on a quarterly basis, and that, since April 1997, an Environmental and Social Review Panel (ESRP), comprised of two Indian and two international experts, has

⁴⁶⁸ Project Supervision is governed by the OD 13.05 since the period of supervision dealt with here was prior to July 2001.

⁴⁶⁹ Request for Inspection, *supra* note 6, para. 4.

⁴⁷⁰ Management Response 2001, *supra* note 13, para. 26-27.

been providing an independent assessment of Coal India Ltd.'s policies and performance regarding environmental and social mitigation. Their visits are listed in Annex 4.⁴⁷¹

453. Paragraphs 42 through 47 of OD 13.05 provide the basic requirements necessary for establishing and conducting sound supervision planning. A detailed supervision plan is included in the Staff Appraisal Report.

11.1. The Supervision Consultant

454. OD 13.05, para. 4(c), provides that the country departments should “*where appropriate, engage local agencies to help carry out supervision.*” The SAR points out that the Project is complex with 25 mines, some of which are as big as normal Bank projects in terms of investment, widely spread over 11 coalfields in five States in the east central part of India. For this reason, the SAR notes that “*it is evident that the Bank’s supervision mission will not be able to visit all the subprojects even once a year, even larger projects cannot be regularly covered.*”⁴⁷² In light of this, a local consultancy company was engaged to supervise all the project mines at least once every quarter. Visits from the Consultant began in April 1997 after this, the firm visited each mine four times a year as a supplement to Bank supervision missions.⁴⁷³
455. The supervision consultant is especially important in this case since the reports of their quarterly mine visits provided the basis for the supervision activity the Bank must carry out pursuant to its own policies. The Bank found the supervision consultant’s environmental reporting adequate, but in February 1998, after two supervision consultant’s reports, the Bank supervision mission reported that it was not satisfied with the consultant’s reporting on social mitigation. At the time of the mid-term review in February 1999, the Bank was still not satisfied with the social consultant’s performance stating that “*there has been a consistent lack of professional supervision by the consultant of its social scientists. This needs to be provided immediately. Alternatively, a replacement for the consultant providing the social science inputs for the Supervision Consultant’s team should be found.*”⁴⁷⁴ Apparently, the performance improved since the Management Response points out that “[o]ver time, as the consultant developed its capacity, the reporting has become a useful tool for Bank Missions.”⁴⁷⁵ Supervision of the project’s environmental aspects was done almost exclusively by one Bank expert who told the Panel that,

⁴⁷¹ Id., para. 28.

⁴⁷² CSESMP SAR, *supra* note 2, Annex 3.2, Project Implementation, para. 24 and para. 68. See also Schedule 2 para. 5 of the Credit Agreement.

⁴⁷³ Management Response 2001, *supra* note 13, Annex 4, gives the details of their visits through January 2001. See also Management Comments 2002, *supra* note 34, para. 93-95, in Annex 3 of this Report. As of June 2001, 16 quarterly reports had been submitted each with one volume covering the environmental and social issues relating to a particular subsidiary.

⁴⁷⁴ 1999 March Aide Memoire, para. 21

⁴⁷⁵ Management Response 2001, *supra* note 13, para. 28.

given the huge scale of the CSESMP, he relied completely on the supervision consultant reports.

456. **In the Panel’s view, it is most unfortunate that Management did not act on the unsatisfactory nature of the supervision consultant’s reports on the social aspects of the Project before February 1999. By that time, over three years had passed since the local NGOs in Parej East had begun to submit their complaints about lack of consultation. As the Panel reported earlier, it found no evidence of consultation on the preparation of the SEIA and the RAP, which deals with matters that have a fundamental impact on the future well being of those being forced to resettle. The Panel would also note that the ESRP reports should have alerted Management to a number of problems as early as April 1997, two years before it concluded that its supervision consultant’s reports were unsatisfactory.**
457. **In light of this, the Panel finds that, prior to February 1999, Management was not in compliance with OD 13.05 on Bank supervision on Parej East.**

11.2. Bank Supervision Missions

458. The SAR stated that “*in order to make this pioneering project successful, the Bank will have to allocate more staff resources and consultants than is usually budgeted.*”⁴⁷⁶ At that time, it was estimated that 11 supervision missions would be needed between July 1996 and June 2001. In fact, as Management points out, it undertook 21 supervision missions during that period, with each of the 25 mines being visited once a year. In the case of Parej East, it undertook 18 missions, an average of six per year. This is highly unusual in Bank supervision. According to the Management, the resources allocated have been “*considerably above the average*” for South Asia.⁴⁷⁷ It is thus clear that supervision of the CSESMP in Parej East has been regular and represents an intense supervision effort in terms of resources allocated and numbers of visits. **In part, because of the inadequacy of the supervision consultant’s reports, the supervision team’s knowledge of ground realities was limited, and for that reason, their efforts to resolve problems had virtually no impact on the ground.**
459. OD 4.30 paragraph 31 requires that Bank supervision missions be staffed with “*requisite social, economic and technical expertise,*” and OD 4.20 requires that provisions requiring appropriate anthropological, legal and technical skills in Bank supervision missions during project implementation should be included in supervision planning. The supervision schedule in the SAR provides for this.
460. The original Task Manager during project preparation was an engineer from the Bank’s Asia energy unit. The first Task Manager for implementation of the

⁴⁷⁶ CSESMP SAR, *supra* note 2, Annex 3.2, Project Implementation, para. 66.

⁴⁷⁷ See Management Response 2001, *supra* note 13, para. 26-27.

CSESMP was an urban planner with expertise in resettlement but reporting to Energy Unit. From February 1998 onwards, however, when implementation of the CSESMP actually started, and before the CSR loan became effective, the Task Manager for the CSESMP was an anthropologist who was familiar with the Project since he had been on a number of supervision missions. In addition, “[t]o ensure autonomy of the CSESMP in relation to the CSR” his reporting function was changed from the Energy Unit to the Social Development Unit, “with a supervision budget independent of CSR.”⁴⁷⁸

461. A 1994 Bank paper on Resettlement Supervision points out that the primary objective of resettlement supervision is to ensure that activities and programs are being implemented in a way that meets the objectives set by Bank policies. However, the paper also indicates that, in responding to resettlement issues, in the past, country directors have been mainly driven by the pulls and pressure of the moment (e.g. a crisis in implementation or queries from the Board), rather than by specific project requirements. In addition, according to the Bank paper, the participation of resettlement specialists in the supervision “has been not only inadequate, but also haphazard, inconstant and impelled by extraneous reasons.”⁴⁷⁹ The paper adds that the supervision of the resettlement activities is difficult and complex because of “the ‘externality’ or the ill integrated status of resettlement as a project component on the one hand, and, the social and political dimensions of the resettlement activity on the other. The externality of resettlement influences the way Bank staff perceive resettlement (as a hindrance to the implementation of the project, as something opposed to their primary interests in the project) and allocate time and resources for its supervision. The social and political dimensions of resettlement introduce a great degree of unpredictability and fluidity to the resettlement process, which conventional supervision strategies based on measure and control find hard to deal with.”
462. In this case, from February 1998 onwards, the Panel considers that the usual competing demands and conflicts with the investment project were minimized since supervision was separately budgeted for and managed, for most of the implementation, by a qualified Task Leader. Unlike past Bank projects that saw frequent changes of supervision specialists or consultants, the Task Leader also drew on the help of the same consistent core of Bank social scientist specialists with the appropriate skills as needed. These same skills are needed for supervision under OD 4.20. In addition, the supervision teams had solid support from the Country Director. His and the team’s worst fear was that when the investment loan was cancelled, Coal India Ltd. would then cancel the CSESMP. The fact that this did not happen, and that progress improved, may reflect the fact that, however late, the commitment of Coal India Ltd.’s Senior Management to compliance with the Bank’s ODs increased – something that the Bank-wide reviews on resettlement had often cited as a lacking. One of the problems about Parej East is that the

⁴⁷⁸ Management Response 2001, *supra* note 13, para. 26.

⁴⁷⁹ Bank paper: Chapter V: Resettlement Supervision, received by the Inspection Panel on February 27, 1995, para. 4(c).

commitment of CCL's Senior Management was not, and did not become, nearly as evident. In addition, the CSESMP in Parej East was affected by an unusual event outside the control of the Bank or CCL. Towards the end of the project (August 2000), the state of Bihar was split in two, and the Parej East sub-project found itself in the new state of Jharkand.

463. It is also important to note that, in February 1998, the new supervision team inherited a sub-project in Parej East designed some years before, albeit with the assistance and approval of the Bank: (RAPs in 1994, IPDPs and EAPs in 1995, performance indicators in 1996 and, during implementation, with further evaluation benchmarks added in 1997 in the form of CSRP cross-conditionalities). As the Panel pointed out earlier, the original RAP and IPDP for Parej East were fundamentally flawed (such as lack of consultation, which made implementation more than problematic in Parej East). No amount or quality of Bank supervision could reverse these flaws. There is evidence, nonetheless, that, however late, they tried to correct a number of serious substantive problems raised by the Requesters.
464. **Performance Indicators.** Table 3.2.6 of the SAR lists, as is customary, the performance indicators and benchmarks that were to be used to monitor the implementation of the CSESMP. Before Board consideration of the CSRP international NGOs questioned the usefulness of these indicators. They believed that performance indicators should measure not just formal 'inputs' of the CSESMP implementation, but the actual 'output' on the ground. To their credit, the Panel notes that staff invited them to submit their suggestions for 'output' performance indicators that the Bank could adopt as part of its supervision. They did so on June 12, 1997 – just after the CSESMP implementation "*Note*" had been sent to the Executive Directors.⁴⁸⁰ When Management responded it indicated that some of the NGO suggestions had already been translated into conditionalities to be established between the CSESMP and CSRP, while others were difficult to translate into measurable indicators but where feasible a measurable indicator would be established.⁴⁸¹
465. Implementation of the CSESMP started only at the end of 1997, a few weeks before the new Task Leader and supervision arrangements were in place. By the time the CSRP was approved in September 1997, the Bank had acknowledged that "*results on the ground have failed to materialize fully.*"⁴⁸² So before the CSRP could become effective, certain conditions set out in Schedule 9 to the Loan Agreement, had to be met. Completion of these output indicators, or time bound social and environmental activities, therefore, became the basis for measurement of CSESMP implementation. They were tracked by every Bank supervision mission and also by the independent ESRP.

⁴⁸⁰ See Request for Inspection, *supra* note 6, Attachment 37, Bosshard to Bauer, dated June 12, 1997.

⁴⁸¹ See "*Response to Proposed Performance Indicators and Follow-up Questions ...*", Bank staff Draft, July 16, 1997.

⁴⁸² See Staff Appraisal Report, India Coal Sector Rehabilitation Project, Report No. 16473, Annex 4.3, Status of Implementation Note, June 9, 1997, para. 3.

466. In its Response, Management states that “[a]s reflected in the Mission aide memoires and Management Letters, the project supervision has strived for a realistic assessment of the problems faced by the project, and has tried to facilitate solutions that promoted improved implementation and compliance with Bank policies. Particular emphasis has been given to economic rehabilitation ...”⁴⁸³ Judging from the Back to Office Memoranda, Aide-Memoires, other mission reports and documents since 1998, Management has not hesitated to be frank about problems and difficulties encountered. It has also proposed solutions and worked with the borrower to find ways of achieving them, and, to the extent that Management can, to follow-up. In the Panel’s view, **based on this evidence, the supervision team generally made a significant effort to overcome some of the problems stemming from the flawed RAP and IPDP for Parej East.**
467. The most fundamental issue the post-1998 supervision mission had to confront was the risk that non-farm based income generation schemes in Parej East would probably fail, causing yet further harm to the PAPs. Faced with this, the current Task Leader recommended that Coal India Ltd. adopt a land-based income generation strategy. Unfortunately, CCL pulled out of the scheme. Noting the success of the one pilot in operation in another mine, the supervision team recommended its immediate adoption in other subsidiaries. This, of course, has not, and will not, help the PAPs in Parej East.
468. Two other problems that are causing the PAPs serious hardship are (a) the lack of title or long term leases to house plots on resettlement sites; and (b) lack of compensation for land under customary tenure. Both of these problems were initially raised by CASS and both were missed in Parej East by Management during project preparation. In July 1997, however, they resulted in an agreement to correct promptly, as reflected a Supplementary Letter to the CSRP Loan Agreement. Every supervision Aide Memoire and Management Letter from this point on pointed to these problems and stressed that they had to be resolved before the mid-term review. As required by OD 13.05 the Task Leader in addition asked the Bank’s Legal Counsel for the project to visit India in October 1998 to follow up on the two issues. As of February 2002, the PAPs in Parej East have not obtained title or a long-lease issue to their house plots. In addition, many tribal PAPs are still waiting to receive land compensation.
469. From the outset, the Requesters have complained about the Coal India Ltd. R&R policy. Beginning in late 1997, the ESRP recommended revisions to this policy. A revised policy was submitted to the Bank in August 2000 and it was discussed during the October 2000 mission. While one of Management’s recommendations was incorporated,⁴⁸⁴ the policy has not been accepted because it still fails to give unmarried sons, at 18 years and over, a plot in the resettlement sites, and it fails to

⁴⁸³ Management Response 2001, *supra* note 13, para. 29.

⁴⁸⁴ That land losers and their dependents above 18 years who are not entitled to a mine job or the newly introduced cash compensation in lieu of a mine job will be entitled to income restoration assistance.

increase the minimum plot size per family to provide room for a second generation, as required under OD 4.30.

470. **The Panel recognizes that since early 1998 the supervision team has made significant efforts to address the outstanding problems in Parej East. In this regard, the Panel has been impressed by the Team's frank and honest assessments in their supervision reports.**
471. **The Team's endeavors have been significant. Unfortunately, however, the results on the ground in Parej East have been mixed. This stems in part from the faulty design of the RAP and IPDP as well as from a serious lack of advance planning during the project preparation phase. It also stems in part from some problems involving complex matters of Indian national and/or state legislation that arose during implementation and have been difficult to resolve, and the lead up to and results of the creation of the new State of Jharkand.**
472. **Coal India Ltd.'s Senior Management told the Panel that a major outcome of the CSESMP, due largely to the dedication of the Task Leader, was a change in their attitude and approach towards the need to address social issues created by mine development and exploitation. In the Panel's view, however, it will take much more time, strong leadership, satisfactory and timely internal and external measures, the employment of appropriate expertise and, probably, significant changes in career incentives for the new approach to filter down to those at the mine level in Parej East. By analogy with changes in the World Bank culture concerning social issues since CSESMP preparation began in 1991, and particularly during the past five years, this is not an impossible challenge, but does take time.**
473. **It is clear that rehabilitation has not yet been completed successfully in Parej East and the outcome of some major issues, such as income restoration, is still in doubt. It is also clear that the current supervision team inherited many of these problems because of the fundamentally flawed preparatory phase. Since its establishment, the current supervision team has generally made a significant effort to overcome the major problems outstanding and, short of suspending or canceling the Credit, doing its best to translate its efforts into outcomes on the ground. In light of this, the Panel finds that since 1998 Management has been in compliance with OD 13.05.**

11.3. Independent Review Panel

474. Management viewed the CSESMP as environmentally contentious. In such cases, paragraph 13 of OD 4.01 requires that implementation should be supervised and guided by an independent panel of experts. Because Management considered the environmental and social aspects as "*strongly interdependent*" it recommended one

Panel to cover both areas.⁴⁸⁵ The Panel was to “... *make periodic reviews of the implementations of CIL’s social and environmental mitigation policies to recommend measures, if required, for effective and successful implementation of RAPs, IPDPs and EAPs. The Panel will also recommend measures to effectively deal with social and environmental issues in the development and operations of coal mines consistent with local laws & regulations and the World Bank’s Operational Directives 4.01, 4.20 and 4.30.*”⁴⁸⁶

475. The ESRP visited Parej East three times. The first was in October-November 1997 for a couple of days. The second was in May 1999⁴⁸⁷ for about one day, and the third in early 2001.⁴⁸⁸ The ESRP issued five reports, which were reviewed by Bank supervision teams. ESRP reporting on specific social issues in Parej East was largely confined to a report on the resistance to relocation in 1997. On that occasion, it recommended⁴⁸⁹ that documentation of resettlement in Parej East should be prepared by an independent “*consultant/NGO (CASS or XISS management)*” as a case study so other subsidiaries and Coal India Ltd. can understand lessons learned. Unfortunately, this has not yet been done but, in the Panel’s view, it should be.

⁴⁸⁵ See CSESMP SAR, *supra* note 2, Annex 3.2, Project Implementation, para. 64.

⁴⁸⁶ See ESRP, 2001 Report, *supra* note 143, para. 1.4.

⁴⁸⁷ See ESRP, 2000 Report *supra* note 73.

⁴⁸⁸ *Id.*, para. 3.1.

⁴⁸⁹ ESRP, 1997 Report, *supra* note 91, para. 5.4.4.

Part Five: The Future after the CSESMP

12. The Future after the CSESMP

476. Paragraph 31 of OD 4.30 on involuntary resettlement closes with a practical thought: *“Complete recovery from resettlement can be protracted and can often make it necessary to continue Bank supervision until well after populations have been relocated, sometimes even after the project has closed.”*
477. It is evident that rehabilitation envisaged by the CSESMP, and required by OD 4.30 has not been completed successfully in Parej East, with the result that PAPs continue to suffer harm. **In the past, the Bank has continued to supervise or monitor RAP issues after closure of a project, and the Panel understands that this will happen in this case.**
478. A major continuing problem is the failure of income restoration. The Panel understands that Coal India Ltd. is to undertake a census of PAP incomes in preparation for the CSESMP Implementation Completion Report. In the meantime, according to the 2002 Management Response, CCL has agreed to give follow-up assistance to the PAPs in Parej East that continue to suffer loss of income.⁴⁹⁰ Because of the inadequacy of the income restoration programs, some of them have been forced to spend whatever remains of their compensation simply to survive. **This is an extremely urgent matter. It should not happen in a Bank-financed project. Steps should be taken to ensure compensation of these PAPs, not only because they have spent their original compensation for their assets on survival, but also for the losses and harm suffered due to delays in restoring their income potential.**
479. The annual IPDP’s for 2002, including that for Parej East contain an exit strategy involving planning for long-term maintenance of community assets created during the past four and a half years of IPDP implementation, and most (including Parej East) involve measures to strengthen community based organizations such as the Village Working Groups and self-help groups.⁴⁹¹ **This will need careful monitoring.**
480. In November 2000, the IMC submitted, a time-bound action plan for enhancement of Coal India Ltd.’s capacity to deal with social and environmental mitigation *“beyond the 25 Bank supported mines and beyond the project closing date.”*⁴⁹² The latest Supervision Aide Memoire reports that Coal India Ltd. has formed *“high level strategy groups both at headquarters and in all subsidiaries, drafted subsidiary action plans, and authorized staff as responsible for the handling of the environmental and social mitigation throughout the company.”* It is also reported

⁴⁹⁰ See Management Comments 2002, *supra* note 34, para. 13, in Annex 3 of this Report.

⁴⁹¹ See December 2001 Aide Memoire, para. 40.

⁴⁹² The latest Bank supervision Aide Memoire points out that based on IMC’s report on *Strengthening of CIL Social and Environmental Management Capability*.

that CCL have 57 social staff, six of whom are trained, and 134 environmental staff, seven of whom are trained.

481. **In the Panel's view, it is vital that, in line with paragraph 31 of OD 4.30, the Bank take steps to continue to supervise the implementation of the CSESMP after the Credit has formally closed, and the Panel notes with satisfaction the Bank's intention to do so. This should include post-implementation monitoring and an audit to determine the effectiveness of the social mitigation measures, in particular those designed to enable PAPs quickly to regain their former income levels and family well-being.**
482. **In relation to this, the Panel notes Management's satisfaction with the success of the Independent Monitoring Committee composed of three Indian nationals of high repute, in the context of follow-up and independent assessment of resettlement issues in the NTPC Singrauli Loan. In the Panel's view, it would be useful to consider a similar mechanism for Parej East.**

ANNEX 1

PROJECT CHRONOLOGY			
Proposed Coal Mine Rehabilitation Project			
January 1993	Government of India requests Bank to support Coal India Ltd.'s efforts to commercialize its mining operations. Project to include a self-standing environmental and social component		
May 1993	Identification Mission		
December 1993	Regional Loan Committee meeting to discuss conditions of appraisal. (Tentative dates proposed: Appraisal April 1994; Board presentation July 1994)		
March 1994	Initial Project Information Document (PID) prepared		
May 1994	Bank informed Coal India Ltd. that its R&R policy is in line with its policies on resettlement and rehabilitation		
Sept/Oct. 1994	Pre-Appraisal Mission to review baseline socio-economic surveys and RAPs		
May 1995	Loan Committee Meeting to review status of the proposed project. Meeting agrees that environmental & social components should be financed under a separate (stand-alone) IDA credit without change to their content and scope		
Proposed Project Split			
Coal Sector Environmental and Social Mitigation Project (CSESMP)		Coal Sector Rehabilitation Project (CSRP)	
November 1995	Agreement reached with the GOI and Coal India Ltd. to package the environmental & social components as a separate project		
December 1995	Appraisal Mission		
	PID sent to the Public Information Center Environmental Assessment Summary sent to the Board		
April 1996	Staff Appraisal Report (SAR) and Memorandum and Recommendation of the President (MOP) sent to the Board		
May 1996	Management response to questions raised by NGOs circulated to the Board		
	Board approval of CSESMP		
July 1996	CSESMP effectiveness		
		March 1997	Appraisal
May 1997	Paris Meeting with NGOs and Bank staff to discuss progress of implementation of the CSESMP as a condition for negotiations of the CSRP	May 1997	Management response to Outstanding Issues raised by NGOs on the CSESMP sent to the Board
June 1997	CSESMP Status of Implementation Note sent to the Board		
		August 1997	SAR and MOP sent to the Board
		September 1997	Board approval of Loan No. 4226-IN
		October 1997	PID processed by the Public Information Center
		June 1998	CSRP effectiveness
February 1999	Midterm Review		

		March 2000	Supervision Mission found Coal India Ltd. not, inter alia, meeting cross-conditionalities between the CSESMP and the CSR
		July 2000	Request from Coal India Ltd. to cancel the uncommitted amounts of the loan
			Loan cancellation
April 2001	GOI requests a one-year extension of the project		
June 2001	Original Credit closing date		
June 2002	Revised closing date		
		June 2003	Original loan closing date

ANNEX 2

Supplement to the Request

ANNEX 3

Management Comments on Supplement to the Request

ATTACHMENT

Biographies

Professor Edward S. Ayensu, Chairman, a Ghanaian national, appointed to the Panel August 1998. Professor Ayensu is Chairman of the Council for Scientific and Industrial Research (CSIR) of Ghana, President of the Pan-African Union for Science and Technology, and International Vice Chairman of the International Institute for Sustainable Development (IISD). He is an international development advisor on environment, energy, mining, housing, biotechnology and agriculture. He was Senior Advisor to the President and Director for Central Projects Department of the African Development Bank. He was formerly the Vice-Chairman of the Scientific and Technical Advisory Panel (STAP) of the Global Environment Facility administered by the World Bank, UNDP and UNEP. He was also a Member of the Energy Sector Management Assistance Program Consultative Group, which is administered by the World Bank and UNDP, and member of the Senior Advisory Council of the Global Environmental Facility. He held many senior positions including Director of Biological Conservation and Senior Scientist during his 20 years at the Smithsonian Institution in Washington D.C. He was Secretary-General of the International Union of Biological Sciences for thirteen years and Founding Chairman of the African Biosciences Network. A Prolific writer and photographer, Professor Ayensu has authored 18 books and numerous scientific and technical papers. He recently co-authored a publication, *HIV/AIDS: Knowledge Protects; New and Specific Approaches to Contain the Spread of HIV in Developing Countries, 2001*. He obtained his doctorate degree from the University of London, and was appointed a Visiting Fellow at Wolfson College, Oxford University. He is a Distinguished Professor of the University of Ghana and, for many years, a member of the Visiting Committee at Harvard University. He is a Fellow of the Ghana Academy of Arts and Sciences, Foreign Fellow of the Indian National Science Academy, Fellow of the Linnaean Society of London, Fellow of the Third World Academy of Sciences, Founding Fellow of the African Academy of Sciences and Fellow of the New York Academy of Sciences. He was twice the recipient of the Ghana National Science Award, the recipient of the U.S. National Museum of Natural History Outstanding Award, and the Outstanding Statesman Award in Ghana during the Millennium celebrations.

Maartje van Putten (Lead Inspector), a Dutch national, appointed to the Panel October 1999. Ms. van Putten was a member of the European Parliament. She has been a highly active member of the Committee on Development and Cooperation for the past 10 years. Ms. van Putten has produced many outstanding reports on the effects of the GATT/Uruguay Round on the developing countries, fair trade, development aid for Asia and Latin America, the EU program for tropical forests and European policies towards indigenous peoples. She has extensive exposure to developing countries, and is active with non-governmental organizations and extremely committed to the cause of development. Ms. van Putten has closely worked with the WWF European policy Office as a key political partner to promote better EU conservation and sustainable development policies. She was also a consistently active member of the ACP (African, Caribbean and Pacific Group)-European Union Joint Assembly. Ms. van Putten was a freelance multimedia journalist for most of her professional career, and was a Senior Fellow of the Evert Vermeer Foundation from 1981 to 1989. She is the author of many articles and books on globalization, international division of labor and on gender issues. Currently a Vice-Chairperson of the European Center of Development Policy Management, Ms. van Putten is President of the Board of European Network of Street Children Worldwide (ENSCW). She holds a HBO (bachelor) degree in community development from Sociale Academie Amsterdam, and a master's degree in social sector management from Protestantse Voortgezette Opleiding (PVO) Amsterdam. At present, she is working on a dissertation at the Catholic University of Tilburg in the Netherlands on the subject of "Compliance Mechanisms for both Multilateral Organizations and the Private Sector".

Edith Brown Weiss, is a U.S. national, appointed to the Panel September 1, 2002. Ms. Brown Weiss has taught and published widely on issues of international law and global policies, including environmental and compliance issues. She received a B.A. degree from Stanford University with Great Distinction. She earned an LL.B. (J.D.) from Harvard Law School and a Ph.D. in political science from the University of California at Berkeley and received an honorary Doctor of Laws from Chicago-Kent College of Law. Ms. Brown Weiss is currently Francis Cabell Brown Professor of International law at Georgetown University Law Center where she has been on the faculty since 1978. Prior to that, Ms. Brown Weiss was on the faculty of Princeton University. She has won several prizes for her work, including the Elizabeth Haub prize from the Free University of Brussels and the IUCN for international environmental law. She served as President of the American Society of International Law and as Associate General Counsel for the U.S. Environmental Protection Agency, where she established the division of international law. She is a member of many editorial boards, including the American Journal of International Law, and the Journal of International Economic Law; and has been a board member or advisor for the Japanese Institute for Global Environmental Strategies, the Cousteau Society, the Center for International Environmental Law; and the National Center for Atmospheric Research, among others. Ms. Brown Weiss has been a Special Legal Advisor to the North American Commission on Environmental Cooperation and chaired the Committee for Research in Global Environmental Change of the Social Science Research Council. She has been a member of the U.S. National Academy of Sciences' Commission on Geosciences, Environment and Resources, the Water Science and Technology Board, and the Committee on Sustainable Water Supplies in the Middle East. She has been elected to membership in the American Law Institute, the Council on Foreign Relations, and the IUCN Commission on Environmental Law.

Jim MacNeill, a Canadian National, former Panel member, served on the Panel from August 1, 1997 to July 31, 2002. He is a policy advisor on the environment, energy, management, and sustainable development to international organizations, governments, and industry. He is Chairman Emeritus of the International Institute of Sustainable Development, and a member of the boards of the Woods Hole Research Center, the Wuppertal Institute on Climate and Energy Policy, and a member of the Jury of the Volvo Environmental Prize. He was Secretary General of the World Commission on the Environment and Development (the Brundtland Commission) and lead author of the Commission's world-acclaimed report, "Our Common Future." He served for seven years as Director of Environment for the Organization for Economic Cooperation and Development. Earlier, he was a Deputy Minister in the Government of Canada. Mr. MacNeill holds a graduate diploma in economics and political science from the University of Stockholm and bachelor degrees in science (math and physics) and mechanical engineering from Saskatchewan University. He is the author of many books and articles and the recipient of a number of awards, national and international, including the Order of Canada, his country's highest honor.

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Dr. Richard Fuggle, holds the Shell Chair of Environmental Studies at the University of Cape Town. He received his PhD from McGill University. He is Head of the Department of Environmental and Geographical Science and is Director of the Environmental Evaluation Unit. He has served as Visiting

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