

Compensation/Rehabilitation Issues of People Affected by the Koto Panjang Dam in Indonesia and the Post-Project Legal Battle in Japan's Courts

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1. Preface

The Koto Panjang Dam is a middle-scale concrete gravity dam with the 58 meters height and the 257.5 meters crest length on the central part of Sumatra Island in Indonesia. The dam was constructed with the Japanese ODA(Official Development Assistance)(See Appendix 1).

The main objective of the Koto Panjang Dam is to generate hydropower electricity. The installed electricity generation capacity is 114 megawatts(38 MW x 3 units).

The Koto Panjang dam site is located at the 10 kilometers downstream of the confluence of two big rivers, namely the Kampar Kanan river and the Mahat river. With these geographical conditions, lands of 124 square kilometers behind the dam were planned to be flooded by the reservoir. For that purpose, it is estimated that more than 23,000 people were displaced.¹

Project Affected Families(PAFs) are minority people in Indonesia who belong to “Minangkabau” community.² In their resettlement process, little considerations were paid to their tradition and culture, and to their unique economic and social systems. In particular, no regard was paid to their collective landownership system which is called as “tanah ulayat”.³

Before the resettlement, PAFs were “manusia sungai”(river people). They lived along the rivers which benefited them for a source of living. They used not only to take drinking/cooking water⁴ from the rivers but also to make use of rivers for bathing, washing and latrine. They used to catch fish from the rivers. They were very familiar with water transportation.

In the old villages, there were many rice fields along the rivers. People also engaged in cultivating “gogo”(rain-fed paddy) through “gotong royong”(mutual cooperation). Around their houses, a variety of vegetables and fruits were planted. Therefore, they were self-sufficient. They

1. According to the Indonesian Government, Project Affected Families(PAFs) were 4,886 families. However, this number is underestimated for two reasons. First, the situation of “keluarga besar” (extended family) is not taken into consideration. Among family members of several generations, only “kepala keluarga”(head of families) was treated as being entitled to compensation. Second, in spite of the fact that two villages Tanjung village and Balung village are affected by the dam construction, people of these villages are not included in this number.

2. “Minangkabau” people live mainly in West Sumatra Province. A part of them lives also in Riau Province. The basic unit of their social life is “suku”(clan) which is formed with descendants of the same maternal ancestor. Each “suku” lives in a “rumah gadang”(big house). A village community which is called as “nagari” is formed with several “suku”. One of characteristics of their culture is a matrilineal system. Among families, their lands and properties are inherited from mother to daughter.

3. This is a communal land. Any villagers can make use of the land. Each “suku” has its own “tanah ulayat”. In general, “tanah ulayat” is maintained in the state of forests. When villagers develop the land, they are allowed to utilize it as long as they can manage it. And, when a new couple appears, a part of this land is allocated to them.

4. For the purpose of drinking, people took it after boiling.

could obtain needed cash by selling agricultural products such as rubber, gambir and orange.

On the contrary, in the resettlement villages, there are no big rivers which can sustain their economy, tradition and culture. They can not produce enough rice to eat. Since it is impossible to change the habit of eating rice, they must purchase it. Thus, their ways of life have drastically changed in comparison with the old villages.

At the great cost of PAFs, the Koto Panjang Dam was completed in February 1997 and started impounding in March of the same year. The power generators came into operation in February 1998.

However, the results of the project were dismal failure. Generally speaking, the Koto Panjang Dam has not only failed to achieve its basic objective of electricity generation but also is leaving a legacy of unsurpassed economic, social and cultural destruction, water-related diseases and environmental damages. Among others, at present, the low water level of the reservoir impedes to generate electricity of 114 megawatts. In addition, people who were displaced by the dam construction have not been rehabilitated in the resettlement villages.

Under these living conditions, PAFs decided to have access to the Japanese Court in order to seek compensation for damages caused by the project on the ground that Japan should bear the lender's liability for its financing. On 5 September 2002, 3,861 villagers filed a lawsuit at the Tokyo District Court. Subsequently, on 28 March 2003, additional 4,535 villagers joined the court case. Total plaintiffs are 8,396 people.⁵ Defendants are the Japanese Government, JICA(Japan International Cooperation Agency), JBIC(Japan Bank for International Cooperation)⁶ and TEPCO(Tokyo Electric Power Services Company, Limited).⁷

Two matters are claimed by the plaintiffs in the Court. First, as the compensation claim for damages caused by the project, 5 million yen for each plaintiff should be paid by the defendants. Second, the removal of the Koto Panjang Dam should be recommended to the Indonesian Government by the Japanese Government.

The main points of the counterarguments by the defendants were as follows; First, the Japanese Government only lent money to the Indonesian Government for the construction of the Koto Panjang Dam project. Second, compensation/rehabilitation issues of PAFs are domestic

5. Environmental non-governmental organization WALHI(Wahana Lingkungan Hidup Indonesia) is also a plaintiff of this court case.

6. In October 1999, JBIC was established by mergence of OECF(Overseas Economic Cooperation Fund) and JEXIM(Export-Import Bank of Japan).

7. TEPCO is a Japanese consultant company and an affiliate of Tokyo Electric Company. It engaged in the works of the Project Finding, the Pre-feasibility study and the Feasibility Study (F/S) of the Koto Panjang Dam project. It also made up the Detailed Design(D/D) of the project together with the local consultant company, P.T. Yodya karya. In addition, it engaged in the Project Management of this project.

matters of the Indonesian Government. Third, there are no laws regulating ODA in the Japanese legal systems. Therefore, the matter should not be treated at the Japanese Court.

However, the Court did not accept the above-mentioned arguments of the defendants and suggested to proceed to the following discussions; First of all, it must be demonstrated that the PAFs(plaintiffs) suffered the actual damages by the Dam construction. After then, the applicability not only of Japanese internal norms such as written laws, unwritten laws and “nature des choses”(nature of things) but also of international norms concerning the involuntary resettlement should be discussed.

According to this direction of the Court, on 16 September 2005, I was invited by the Court for testimony. After then, from October 2005 to January 2006, seven villagers⁸ and Dr. Gusti Asnan, expert of “Minangkabau”, were invited by the Court for testimony.

Through the Court discussions, damages of PAFs were demonstrated as an undeniable fact. And also it was made clear that the Japanese Government, OECF(JBIC) and TEPSCO had involved in the resettlement process. Therefore, the discussion in the Court is centered on the issue as to whether the defendants had made efforts to avoid the occurrence of adverse impacts upon PAFs in the resettlement process. In this context, the main discussion point in the Court is whether due care to avoid adverse impacts was paid by the defendants.

In the course of proceedings, on 6 June 2006, the Tokyo District Court issued an order for disclosing the related documents of the project to the defendants. Among others, the Court ordered TEPSCO to present the Court the contract for the Project Management, the Progress Report and the Completion Report of the project. On the other hand, the Court did not accept the claim by the plaintiffs concerning the disclosure of two main Loan Contracts of the project which included three conditions for disbursement of the loan.⁹

For that reason, both plaintiffs and defendants appealed the issue to the higher court. Now, the matters are under the Tokyo Higher Court. As long as the problems over the disclosure order are pending, no final decision on the merits of the litigation will not be reached by the Tokyo Dis-

8. Mr. Mudo in Tanjung Pauh village, Mr. Rasad in Baru Bersurat village, Ms. Wardia in Koto Tuo village, Mr. Syamsuri in Tanjung Balit village, Mr. Zakirman in Lubuk Agung village, Mr. Marlis in Koto Masjid village, and Mr. Amir B. in Baru Bersurat village.

9. Under the apprehension of the repetition of the resettlement problems of the Narmada Dam (Sardar Sarovar Dam) project in India and the Kedung Ombo Dam project in Central Java, three conditions were attached to two main Loan Contracts(IP-358 and IP-374) of the Koto Panjang Dam project under the strong request by OECF. Those conditions were not disclosed by OECF. However, according to the Indonesian magazine “*Prospek*”(30 March 1991), the three conditions were the following: Each family must agree to relocate. The criteria for compensation must be accepted by the community. It should not be decided only on the side of the government. All wildlife, particularly the 30 Sumatra elephants living in the project area, must be managed wisely without their extinction.

trict Court.

2. Present State of Affairs of the Project

(1) Low Water Level in the Reservoir

Under the original plan of the Koto Panjang Dam reservoir, the high water level was at 85.0 m, the low water level at 73.5 m, and the normal water level at 80.6 m. However, the actual water level is far less than the normal water level.

Under these water conditions, it is impossible to generate the planned electricity of 114 MW. The beneficial region suffered a series of blackouts because of the low water level of the reservoir. The Indonesian electricity utility PLN (Perusahaan Listrik Negara) has been under surges of complaints and protests from consumers. On 25 February 2002, the Director of Pekanbaru office of PLN, Johni Telemeo, explained the situation by saying that the water level of the reservoir had fallen significantly in the past few months so that full operation of the power house was impeded by it and only one turbine could be operated.¹⁰ Afterwards, the situations have not been improved. People in the region have suffered the frequent going off of the electricity.

Lack of rainfalls is an excuse of PLN for the low water level in the reservoir. However, it must be noted that even after heavy rainfall, the water level of the reservoir is rapidly fallen. It implies that there are some structural problems especially in terms of geology of the reservoir.

In addition, many villagers start going back to the original villages. In the case of the Koto Ramo district in Tanjung Balit village, about 30 families (approximately 120 persons) have come back to their original houses from the resettlement village, Rimbo Data. Another about 100 families come to the old village for working in the daytime and go back to Rimbo Data at night. In the old village, they engage in rubber tapping, gambir production, fishing, timber logging and so on.

Similarly, some people of Gunung Bungsu village come to the old village for cultivation in the daytime and go back to the resettlement village for sleeping.

In the case of Muara Mahat Baru village which is located at the place of the north-west about 20 kilometers from Bangkinang, approximately 30 % of villagers have come back to the old village. They build small huts at the old village and stay there several days for working. Most of them engage in the rubber tapping works or the gambir production

(2) Degradation of Water Quality of the Reservoir

In 1980s, the reservoirs of the Balbina Dam and the Tucurui Dam in Brazil were filled without removing most of vegetation. It caused a strong international criticism not only from civil engineering circles but also from environmental groups. These inactions by the Brazilian electricity utility Eletronorte have left tremendously serious environmental problems on both

10. *Riau Mandiri*, 27 Februari 2002.

rivers (Uatuma river and Tocantins river) until today.¹¹

PLN and TEPSCO did not take lessons from the past experiences. Surprisingly, in the middle of 1990s, the Koto Panjang Dam reservoir was impounded without removing vegetation in it.

The decomposition of the organic matters in the reservoir has severely deoxygenated the water. For that reason, it has caused the degradation of water quality. As to this problem, the Third Party Ex-Post Evaluation Report of JBIC describes as follows;

“Before the inundation, vegetation in the reservoir area was not cleared. They have been removed only from 25 ha of reservoir near Tanjung Balit and Muara Takus so far. The major purpose of the clearing is to avoid water quality deterioration due to decomposition of organic matter. As mentioned below, significant adverse impact on the water quality was not observed. However, tree tops can be seen above the water surface and it adversely affects the amenity. Impact of the removal of vegetation to the fishery is complex and unknown: the remaining vegetation may hinder the navigation but may benefit fishery by further eutrophication.”¹²

This is a very strange observation report. It must be pointed out that adverse impacts of decomposition of organic matter occur at first not at the water surface but at the bottom part of the reservoir. In fact, significant adverse impacts on fishery due to deoxygenation of the bottom part have already taken place. According to local newspaper, in February 1999, several thousands bottom fishes which are locally called as “gabus” were found dead in the reservoir.¹³

The reservoir also has caused massive emissions of a corrosive and foul-smelling gas. Many people who engage in the reservoir fishery talk about the foul smelling of waters. It also extends 5 kilometers around the reservoir.

In addition, shallow areas of the reservoir are good habitats for vectors of water-borne diseases. However, no systematic monitoring works about these diseases have been carried out by the Indonesian Government. Moreover, since resettlement, no health check works for people have been done until now. There is no basic data concerning water-borne diseases such as malaria and schistosomiasis.

(3) Sedimentation Problems

In order to tackle the sedimentation problems in the reservoir, it is the common practices to prohibit the economic development activities around the reservoirs. However, in the case of the Koto Panjang Dam, the resettlement villages were constructed around the reservoir. At the same

11. On this problem, see Patrick McCully, *Silenced Rivers: The Ecology and Politics of Large dams*, 1996, pp.38-39.

12. JBIC, *Third Party Ex-Post Evaluation Report on Kotapanjang Hydroelectric Power and Associated Transmission Line Project (1)(2)*, 2003, p.29.

13. *Padang Ekspres*, 22 Februari 1999.

time, 2 ha rubber plantations and 0.4 ha crop yards, which are called as “palawija”, for PAFs were established around the reservoir.

In addition, illegal logging by timber companies and military-related companies has been poorly regulated by the Government. Villagers also engage in illegal logging for seeking their daily incomes.

These situations have denuded the once lushly forested slopes of the region. As a result, the degree of sedimentation in the reservoir has been accelerated. It will adversely affect the life-span of the reservoir.

(4) Unpaid Due Compensation

Before the resettlement, the Indonesian Government did not disclose the compensation criteria. Instead, in the case of eight villages in Riau Province, the compensation criteria were decided in the secret meeting which was held at Bangkinang on 13-14 April 1991. In that meeting, only ten representatives from each village were invited to take part in it by the Government. Although they resisted accepting the low compensation criteria, their efforts bore no fruits.

On the other hand, in the case of two villages in West Sumatra Province, the meeting for deciding the compensation criteria was held at Pangkalan Koto Baru on 19 April 1991. Two representative from each village were invited to participate in it. They also were obliged to accept the low compensation criteria

When villagers knew the acceptance of the compensation criteria by a small number of representatives, they got angry. But, they could not make an open protest. Then, on August 1991, representatives of eight villages in Riau Province had a meeting at Batu Bersurat village. At that meeting, they stated as follows;

“We fully disagree with and reject the level of compensation to our lands as set and signed in a formal contract between the local government leaders and some selected community leaders.”¹⁴

That statement together with about 700 signatures was delivered by five representatives of villages to OECF Jakarta Office on 2 September 1991. Therefore, OECF was acquainted with the dissatisfaction in the compensation criteria by villagers.

On the following day, five representatives together with about 20 members of KASANG (Komite Aksi Solidaritas koto Panjang)¹⁵ visited the Japanese Embassy in Jakarta. However, Embassy members refused to see them. During the prolonged negotiation at the Embassy gate about holding a meeting, KASANG members shouted and repeated speechers “Go to hell with your aid!”. As a result of the negotiation, the Embassy members accepted to have a meeting on

14. *Consensus Statement from the People of Kecamatan XIII Koto Kampar Affected by the PLTA Dam Construction Project in Koto Panjang*, August 1991.

15. Koto Panjang Solidarity Action Committee.

next day.

Eight people (five representatives and three KASANG members) attended the meeting which was held at the conference room in the Embassy on 4 September 1991. But, surprisingly, in the room there were four policemen. Two wore uniforms, but other two wore casual cloths.¹⁶ Therefore, eight people were obliged to refrain from frank talking and just delivered the above-mentioned statement and about 700 signatures attached to it.

After then, on 7 September 1991, two representatives¹⁷ of villagers came to Tokyo. On two days later, they held a press conference and distributed a paper entitled an "Appeal to the Japanese Government and People from the Koto Panjang Solidarity Action Committee, Indonesia". In referring to the second condition attached in the Loan Contracts, that paper stated as follows;

"In order to fulfill the second OECF requirement, the Indonesian government authorities entered into a secret agreement with ten selected members of each village to fix the amount of compensation that the entire village would receive. In other words, ten people decided on behalf of everyone, without the consent or knowledge of the other villagers. The amount of compensation to be received by the villagers is shamefully low, for example, the price of land for vegetables, rubber and other tree crops is set at 30~50 Rupiahs (less than 3 yen to 4 yen) per square meter. The compensation for each producing rubber tree is set at 2,000 Rupiahs (the value of five years of rubber production from one rubber tree is about 46,000 Rupiahs) and for one coconut tree it is set at 4,000 Rupiahs (the value of five years of coconut production from one coconut tree is about 360,000 Rupiahs). There is no possibility that the villagers would have willingly agreed to such an incredibly low amount of compensation."¹⁸

However, those appeals by villagers were disregarded by both the Indonesian and Japanese Governments. After then, people were forced to sign inventories of lands and houses without having notice of the compensation amounts.¹⁹

In addition, the payment process of the compensation was at the center of major corruption scandals. The corrupt practices among government officials were so rampant that PAFs received inadequate compensation in terms of lands, houses, fruits and so on. Corrupt local officials or other middlemen manipulated the payment of the compensation and they skimmed off a cut for

16. They seemed to be members of intelligence.

17. Two were Mr. Anis J., villager of Batu Bersurat and Ms. Yeni Rosa Damayanti, member of KASANG.

18. *Appeal to the Japanese Government and People from the Koto Panjang Solidarity Action Committee, Indonesia*, 9 September 1991.

19. In most cases, "Tim Penetapan Ganti Rugi" (Team for Deciding the amount of Compensation) was composed of 1~3 governmental officials. Their visit time was generally only 15~30 minutes. Therefore, they did not usually carry out the measurement of houses and lands. Most of their research were paper works.

themselves. Central government officials also involved in the corrupt practices. In particular, officials of BPN(Badan Pertanahan Nasional)²⁰ Bangkinang demanded and took openly bribes.

Many villagers were not paid compensation on the ground of the overlapping of landownership or the discrepancy in land certificate with the location. Other people were required by government officials to pay bribery money at the time of receiving compensation. If they expressed their complaints, they were intimidated by being told that they could not receive houses and lands in the resettlement villages.

The village leaders such as “nirik mamak”²¹ were also involved in the corruption practices. Many of them played a role of “compensation middlemen”.

At the initial stage of the Court proceedings, the Japanese Government and JBIC insisted that the adequate compensation had been paid to PAFs. They said that until July 1998 about 99.7% of compensation had already been paid to PAFs.²² However, this argument was self-defeating because SAPS (Special Assistance for Project Sustainability) Team of JBIC²³ illustrated many cases of inappropriate payment of compensation.

According to the SAPS Team Report, in Pongkai Baru village, “land compensation value is far below prevalent market price and 80% of the residents have not been compensated” and in Tanjung Balit village, “about 50% of the lands have not been compensated.”²⁴

It is also reported that in Tanjung Pauh village, until now more than 150 families have not been compensated and in Binamang village, “right now, there is still a problem of compensation which is not yet paid to 20 persons.”²⁵ As to the payment problems in Tanjung Alai village, SAPS

20. National Land Agency.

21. In each village community, there are several “nirik mamak”(traditional non-formal leaders) who lead each “suku”. In the decision-making process of the community, they play an important role together with “alim ulama”(Islamic leaders) and “cerdik pandai”(intellectual leaders).

22. Preparatory Pleadings of the Japanese Government and JBIC, 3 July 2003, p.9, respectively.

23. In order to tackle the remaining resettlement problems of the Koto Panjang Dam Project, JBIC dispatched a research team to Indonesia from February to October 2002 under the name of SAPS (Special Assistance for Project Sustainability). The SAPS Team was composed of the Japanese consultant company “Nippon Koei Co., Ltd.” and the Indonesian NGO “Bina Swadaya”.

The assessment works of the resettlement villages were mainly carried out by “Bina Swadaya”. Members of “Bina Swadaya” visited villages and transected them for research. At the same time, they held several hearing meetings at each village.

24. SAPS Team for Japan Bank for International Cooperation(JBIC), *JBIC Special Assistance for Project Sustainability,(SAPS) for Kotapanjang Hydroelectric Power and Associated Transmission Line Project in Republic of Indonesia*, Interim Report, Appendix 2(*Detailed Result of Impact Survey*), May 2002, p.A2-65 and A2-156.

25. *ibid.*, Appendix 3(*Result of Village Assessment Made by NGO*), pp.A.3-111 and A3-44.

Team describes as follows;

“In the process of the price determining, community is not involved and received the existing information only (in the shape of table and price). The estimation was globally conducted and took part community only as the guide to each of its location. The community was paid by check and they went to the bank by themselves to change into the cash. Some communities who feel loss, made complaint to BPN Bangkinang, and the bank fulfilled their request. However, some others who feel loss, too, have no courage to complain because they were frightened if they complain, they will receive no indemnity. The condition of most community at that time was confused and scared, and therefore, they only just received the indemnities paid to them. The customhouse and public cemetery is not indemnified, only the cemeteries of community actors that were given the relocation cost. This occasion became the valued experience for community, and so, the community feels to be cautious to confront with the outside people. Up today, community requires to receive the indemnity cash to wipe out the tears and not recall of the compensation matter.”²⁶

As is known from this, at present, PAFs demand not only the real loss of compensation in the past but also psychological indemnity until now. At the same time, the inappropriate payment of the compensation is one of reasons of distrust to the Government by villagers.

Strangely, this SAPS Team Report has not been presented to the Court by JBIC itself. Instead, it was submitted to the Court by the plaintiffs. At any rate, as is known from the above-cited sentences, the SAPS Team clearly admits the inadequateness of the compensation. Therefore, the argument of the defendants commits self-contradiction.

(5) Poor Living Conditions in the Resettlement Villages

In the resettlement villages, each family was provided a “transmigration“-type house with 6 × 6 meter scale. In general, the house was made from the plywood wall, zinc plates roof and thin cement floor. However, in some villages, including Ta njung Alai, Pongkai Baru, Ranah Sungkai, Lubuk Agung, and Mayang Pongkai, roofs of houses are made from asbestos plates. In addition, in villages in Riau Province, most of public facilities, including schools elementary schools and junior high schools , village head offices and small mosques which are called as “musholla”, are asbestos roofs. It is greatly concerned about the potential impacts of asbestos on the health of villagers.

In the resettlement villages. most of wells were useless because of bad water quality with brown or red color and bad smell. Some of them were dried up in the dry season. Many wells did not meet with water sources because their bottoms were cemented. They were not wells but only rainfall receivers.

Each house was equipped with a small toilet with 1 x 1 meter scale. But, it did not locate inside

26. *ibid.*, p.A3-71.

of the house but outdoor. It was surrounded by wooden panels. Beside it, a septic tank was installed. However, since flash water was not available, most of villagers abandoned them in a short period. Instead, they use the yards behind their houses or the nearby small rivers as a place of defecating.

In the time of resettlement, most of 2 ha rubber plantations were vacant and even young rubber trees were not planted. For that reason, most of villagers encountered with serious problems of income shortage.

As to the planting situation of rubber trees in 1996 just before the impoundment of the reservoir, Professor Syafruddin Karimi of Andalas University, in his paper which was submitted to OECF, described as follows:

“Every household in the new villages got two hectares of dry land for rubber plantation. The people understood that they would have those rubber already planted. The rubber should have reached the age of 2 years when they occupied their houses in the new villages. Only in Pulau Gadang, the people got the rubber planted. However, it is learnt from the group interview that the number of rubber tree is found alive only 30 per cent of the number supposed to grow. The condition in other villages are not better than Pulau Gadang. In Muara Takus for instance, rubber trees are not yet planted. Here, people do not even know yet the exact location of the two hectares land for rubber they are going to receive.”²⁷

As regards the planting situation of rubber trees in MuaraTakus village in 2002, SAPS Team reports as follows;

“The government hitherto pledged that upon the PAFs relocation to the new village each household would receive 2 ha of ready for harvesting rubber plantation. However, such promises were empty words as in reality each household received 1 ha of empty land. Each plot contained only 2~10 trees, hence they considered the plots to be empty.”²⁸

For two years after the resettlement, “jadup”(jaminanhidup)²⁹ was provided to each family by the Government. It comprised some basic daily needs such as rice, salted fish, sugar, salt, kerosene and soap. However, the quality of goods provided was terribly poor. In particular, rice was old and badly tasted. And, most of salted fishes were rotten. Although rich people did not eat them, the poor had to consume them.

After “jadup” came to a halt, most of villagers faced to the difficulties to eat and to send their children to schools. For that reason, many villagers forced to sell their 2 ha rubber plantations and/or 0.4 ha “palawija” to rich neighbors, companies or “tauke”(middlemen). The price of those

27. Syafruddin Karimi, *Socio Economic Impact Study of Koto Panjang Hydro Electric Power Plant Project*, Final Report submitted to the Overseas Economic Cooperation Fund(OECF), 1996, pp.13~14.

28. SAPS Team Report, op., cit. p.A2-98.

29. This living allowance (support) was in principle provided to household members for two years after the relocation.

lands offered were lower than the market price. However, they kept on selling them due to urgent needs.

Even if villagers continue to hold their lands, they do not contribute to the improvement of their living conditions. Most of “palawija” lands are located at hilly slopes. They are not fertile and difficult to get irrigation water. Therefore, under these conditions, it is difficult to operate farming of crops, vegetables and fruits in the form of the sustainable agriculture.

(6) Environmental Problems of the Project

The project site of the Koto Panjang Dam reservoir was one of the richest biodiversity on the earth. However, in F/S, no consideration was paid to the ecological uniqueness and importance of this region. SAPS Team reports as follows;

“Recent research has found that the lowland forests of Riau contain the highest biodiversity of any forests on Earth (WWF) and had proper surveys of the biodiversity been conducted during the Feasibility Study there can be little doubt that a number of species of conservation concern other than elephant and tiger would have been found.”³⁰

This implies the inappropriateness of the Koto Panjang Dam project. That is say, if the appropriate consideration was paid to the richest, most diverse and complex ecosystem of the region, it should not be subject to the submergence. Its mistake of the approach in F/S was not rectified during the process of D/D. In this sense, the responsibility of idleness of TEPSCO, JICA and OECF is significant.

The project site was an excellent habitat for endangered species including Sumatra elephant, Sumatra tiger, Sumatra bear, tapir and gibbon. While TEPSCO, JICA and OECF emphasized a protection measure of elephants, they never mentioned to the fate of other mammals and forest animals as well as flora community in the forests.

In the implementation process of the project, even an “animal rescue operation”³¹ was not carried out by PLN except elephants. As a result, most of them were drowned or starved to death.

During the Court proceedings, the defendants explained that as a protection measure of elephants 36 heads had been caught at the project site and translocated to the natural reserve “Giam Siak Kecil.”^{32,33} However, this explanation contravenes with the SAPS Team Report. The

30. SAPS Team Report, op., cit. p.5-14.

31. In most cases, this operation is only a propaganda for justifying dam construction works. Therefore, its actual effects are doubtful. On this problem, see Patrick McCully, op. cit. pp.53~54.

32. Giam Siak Kecil is located at Bengkalis district between Pekanbaru and Dumai. It is about 85 kilometers away from the home of the elephants in Koto Panjang area. It was declared a Forest Wildlife Reserve by means of Governor Decree of Riau Province dated 3 November 1983.

33. Preparatory Pleadings of the Japanese Government and JBIC, 3 July 2003, p.11 and p.22, respectively.

Report says as follows;

“The fate of the translocated elephants is unknown, but it is doubtful they can have survived in the Giam Siak Kecil area due to logging and conversion of natural forest areas to plantation *Acacia* production forest and oil palm plantation.”³⁴

In reality, at present, no elephant from the Koto Panjang area can be found at the Giam Siak Kecil. Where are they “protected” ?

On the other hand, an important migratory route for the elephants was cut off by the Koto Panjang Dam reservoir and the resettlement villages. Remaining elephants are now dangerous pest for villagers. They not only intrude into 2 ha rubber plantations and 0.4 ha “palawija” but also attack and destroy houses. In Koto Masjid village, some houses which were constructed on the migratory route of elephants were attacked several times by them. For that reason, about 20 families had to relocate to safer places with their burden.

Other remaining animals also become more ferocious than ever. In January 2005, two villagers of Tanjung Pauh were killed by a Sumatra tiger. After then, many villagers are afraid of going to their rubber plantations.

Lastly, it must be added that the Koto Panjang Dam badly affects the riverine ecosystem. A migration route of many riverine wildlife/fish species was cut off by the Dam. Since fish ladders³⁵ are not equipped with the Dam, migratory fishes such as “Patin” and “Tapah” can not go upstream of the Dam.

3. Short History of the Project

The Koto Panjang Dam project is not based upon the concept of an “endogenous development”. That is to say, it was not desired by the Indonesian public, especially by local people.

This project was first proposed in 1979 by TEPSCO after its Project Finding works. In the following year, TEPSCO carried out the Pre-feasibility Study of the project.

With these research results, TEPSCO tried to sell the project to both Indonesian and Japanese Governments. In response to marketing efforts of TEPSCO, the Indonesian Government asked the Japanese Government to make a Feasibility Study (F/S) on this project.

F/S was carried out by JICA in 1982 ~ 83 . In reality, it was done by TEPSCO in the name of JICA.

In the process of F/S, two alternative proposals were examined by TEPSCO. One was to construct relatively smaller two dams on the Mahat river and the Kampar Kanan river in order to reduce the number of oustees needed to be relocated by them. Under this scheme, about 390 families were considered needed to be relocated by the construction of 38 m high dam on the

34. SAPS Team Report, op., cit. p.5-14.

35. A device of fish ladders is mainly based on salmon migrations. Therefore, that device is not necessarily appropriate to highly diverse migratory fish species in the tropics.

Mahat river and 30.5 m high dam on the Kampar Kanan river. Another alternative was to construct a single bigger dam on the Kampar Kanan river. Under this scheme, 2,644 families were considered needed to be displaced by the construction of 58 m high dam.

As a result of the comparative study of both alternatives, TEPSCO suggested the adoption of the latter scheme on the ground that it is “economically favorable”.³⁶ The main concern of TEPSCO was the maximization of hydroelectricity generation.

ANDAL(Analisis Dampak Lingkungan)(Environment Impact Analysis) works of the Koto Panjang project were carried out by Andalas University of Padang in 1984. It was only a rubber stamp for justifying the project.

Based upon F/S and ANDAL, in 1985, OECF provided a loan of 1,152 million yen for the Engineering Service(E/S) to the Indonesian Government. With this loan, a report for the Detailed Design(D/D) was made up by TEPSCO and P.T. Yodya Karya.

As a part of D/D, RKL(Rencana Pengelolaan Lingkungan)(Environmental Management Plan) and RPL(Rencana Pemantauan Lingkungan)(Environmental Monitoring Plan) were made up by Riau University. These plans were a kind of paper works which underplayed the environmental impacts of the project and exaggerated its benefits.

In that process, it was the Minister of Mines & Energy at that time, Ginandjar Kartasmita, who played a fixer role of the project between the Suharto regime and the Japanese Government. At the press meeting on 23 April 1990, while he emphasized having taken the necessary measures for environmental protection, he also justified the forced displacement of local people by stating as follows;

“On the PLTA Kotapanjang itself, the government has conducted the study on the environmental aspects, the study on the environmental management(RKL) and RPL(the study of Monitoring Plan on environment). Based on the above studies, the government has considered seriously on the possibility of impacts aroused and the steps to be taken to prevent the issues.

Their present lands which will be used for the project(PLTA Kotapanjang) will be a kind of ‘sacrifices’ of the people for the ‘development’ program of the government”³⁷

In response to this view, the Japanese Government expressed its intention ready to finance the project at the meeting of IGGI(Inter-Governmental Group on Indonesia) which was held at Hague on 12~13 June 1990. However, this decision provoked criticism and opposition from local people/ NGO and Japanese taxpayers.

For that reason, in September 1990, OECF dispatched a reappraisal mission to Indonesia. This

36. JICA, *Feasibility Study Report on the Kotapanjang Hydroelectric Power Project*(Japanese edition), 1984, p.7.

37. Press Release issued by the Department of Mines & Energy, 23 April 1990.

was an unusual measure. However, the research result was not disclosed by OECF.

Under this secret veil, on 14 December 1990, OECF concluded a loan contract with the Indonesian Government to provide 12,500 million yen for financing a Phase-1 of construction works. After then, on 25 September 1991, OECF concluded a loan contract with the Indonesian Government to provide 17,525 million yen for financing a Phase-2 working.

With this financing, construction works of the Koto Panjang Dam started in 1992. The construction of the Dam was carried out by the joint venture of the Japanese company Hazama and the Indonesian company P.T. Brantas Abipraya.

The construction of an alternative national road and two bridges was undertaken by P.T. Citra Sarana Bahari Persada and P.T. Agra Wisesa Utama. The former was operated by Tutut, elder daughter of Suharto and the latter was operated by her husband Indra Rukmana Kowara.

This is symbolic in understanding the meaning of the “national development”. In addition, the biggest beneficiaries of electricity generated by the Koto Panjang Dam were the conglomerates such as the Salim Group and Sinar Mas Group who closely connected with Suharto families including Sigit Harjojudanto, Bambang Trihatmojo and Tommy Suharto. They intended to develop large-scale palm oil and rubber plantations on Sumatra Island and needed electricity for processing those agricultural products. According to the Indonesian NGO “SKEPHI”(Jaringan Kerja Pelestarian Hutan Indonesia)³⁸, the Bupati (Governor) of Kampar district at that time, Saleh Djasid, in justifying the Koto Panjang Dam, said as follows;

“Koto Panjang Hydroelectric project has been considered as one of the ‘locomotive’ that will pull Riau towards progress. In Riau, the industry, palm oil plantation and Koto Panjang project are the ‘locomotives’ that hopefully will accelerate other sectors of development. The Riau provincial government also confirms that the project is needed to boost industrialization. Thus the industries need far more electricity than the people. Riau is indeed embarking on large-scale industrialization development, involving mainly pulp and paper, plywood, oil palm and tourism industries”.³⁹

As is known from this, the Koto Panjang Dam was considered by promoters of the project as the “locomotive” of electricity-intensive industries at the sacrifice of local people. Here is raised a question “for whose benefits ? “

4. Basic Flaws of the Project

(1) Lack of the Basic Research on the Geological Conditions

One of the basic problems of the Koto Panjang Dam project is originated from lack of the basic research activities related to this project. In this respect, particularly serious was lack of the basic

38. The NGO Network for Forest Conservation in Indonesia.

39. SKEPHI, *The Darkness of Electricity: The Case of Koto Panjang Hydroelectricity Project*, 1991, p.11.

hydrological and geological research. In F/S report, there was no concrete and detailed description about the geological conditions of the project area. It means the disregard of the existence of the complicated geological conditions such as faults, sink holes and underground channels in the planned reservoir area.

This disregard is the main cause of the present low water level of the reservoir. The presumption is that the water is leaked from the bottom of the reservoir.

The main cause of the problem is assumed to be the existence of the underground channels of the reservoir. In the old village of Lubuk Agung, a big hole existed. No body did not know where water go through that hole and the underground channel.

After filling water in the reservoir, it is presumed that these holes and underground channels become bigger and broader with the water pressure. It is now reported that at Rokan 80 kilometers apart from the dam site, huge amount of water appears on the surface.

The Koto Panjang Dam reservoir is like a broken bucket. Since water continues to leak from the bottom of the bucket, it can not keep water in it.

(2) Failure of “Local Transmigration” Policy

The basic resettlement policy of the Indonesian Government concerning PAFs of the Koto Panjang Dam was the application of “transmigration”⁴⁰ model to them, namely the relocation

40. “Transmigrasi”(transmigration) was the largest resettlement program in the world. It aimed at moving millions of people from the densely populated “inner islands” of Java, Bali, Lombok and Madura to the sparsely settled “outer islands” such as Sumatra, Kalimantan, Sulawesi and Irian Jaya.

The transmigration program has its roots in the “kolonisasi”(colonization) policy of the Dutch Colonial Government. The Dutch aimed at sending “surplus people” of Java to “outer islands” for the purpose of obtaining the labour force in coffee/tobacco plantations.

After Indonesian Independence, the first President of Indonesia, Sukarno, inherited this policy and described it as a vehicle for nation-building through assimilation and ethnic integration. However, it was under the Suharto regime that the program was developed on the large scale. During the Suharto administration, transmigration program received massive “aid” money from U.N. agencies , MDBs(Multilateral Development Banks) and governments of developed countries.

However, most of transmigration sites were outright failures due to poor soil, flooding or soil damage caused by mechanical land clearance. A number of transmigrants left the resettlement sites and were forced into the forest to clean virgin lands to survive. They engaged in sifting cultivation which was quite different from traditional rotation cropping practiced by indigenous peoples. Other people returned home to Java who were called as “remigrasi”(returnee). On the other hand, countless tribal peoples were taken their lands for the transmigration program. At the same time, the program led to the irreversible destruction of huge areas of tropical forest.

For that reason, in 1984, the Indonesian Government expressed a major policy shift from giving out

under the “pola transmigrasi local” (local transmigration model).⁴¹ At the initial stage, the Government suggested to PAFs that they should relocate to the resettlement sites under the PIR scheme. Among others, the Government proposed to PAFs the resettlement to the oil palm plantations under PIR scheme. According to SKEPHI, the aim was that “the plantations need cheap labour, project officials want to economize on resettlement costs.”⁴²

However, most of PAFs were reluctant to accept that policy. In particular, they strongly resisted relocating under the PIR scheme. It was their opinions that they were different from landless transmigrants from Java. On this matter, SKEPHI reported as follows;

“The people consider themselves as the lords of the land on which they live and work now and which will become the site of the project. Therefore, they do not want to be treated as transmigrants on their own land. So, they demand a different treatment from that of transmigrants regarding the resettlement pattern and implementation.

In this context they demand that in their new village the houses should not be like the houses of transmigrants in size and quality, and their villages be organized in such a way that there occurs no erosion of culture, traditional structure and social life. They think that

lands to settlers for subsistence agriculture to setting up cash-crop “estates”. The new policy was called as PIR (Perkebunan Inti Rakyat)(Nucleus Estates and Smallholders). PIR is a plantation scheme in which there is a nucleus company and there are a number of the plasma (smallholder) farmers. The nucleus company, state owned or private, is the capital holder. Each smallholder family is given 2 ha of lands to be planted with cash crop such as oil palm, rubber, coffee, cloves and so on. The smallholders are forced to sell their produce to the company at a fixed price. Instead, they must buy everything including fertilizer, pesticide and daily goods from the company. Therefore, their status was often reduced to mere labours.

The PIR program was an attempt by the government to boost its exports of cash crops, hence to reduce its dependence on oil revenues. The biggest beneficiaries of the program were Chinese-owned corporate conglomerates such as Salim, Sinar Mas and Astra groups who closely linked to the Suharto family.

After the collapse of the Suharto regime in May 1998, transmigration program was in practice at a standstill. Main reasons of de facto halting were as follows; first, the government became difficult to allocate its budget to the program due to financial crisis. Second, conflicts between transmigrants and local people came to the surface. Third, public criticism to “corruption” problems associated with the program was mounted at nation-wide level.

41. When there needed to relocate local people by a development project, they were usually resettled in the same region according to a national transmigration model. Under this model, the local people who were taken from their original lands could not receive compensation over traditional lands used for shifting cultivation, hunting and foraging.

42. SKEPHI, *ibid.*, p.15.

their resettlement should be just a case of moving their village a little further up and not disruption of their life.”⁴³

However, these demands by PAFs were not accepted by the Government. Under such a situation, some people accepted to move to the new villages under the PIR scheme. Those are Mayang Pongkai village and Muara Mahat Baru village. Both are oil palm plantations. The former is operated by a national company PTP V Nusantara, and the latter is owned by P.T. Rama Jaya Pramukti, an affiliated company of Sinar Mas Group.

In this resettlement process, a part of residents in Pongkai village refused to move the PIR plantation. They preferred to go to Pongkai Baru village. However, Some of them refused to go there because they believed that under the customary law they were prohibited from living in the upstream area of “Candi Muara Takus”. For that reason, they established a new village(Pongkai Istiqomah) with their own burden. As a result, the old Pongkai village was split into three new villages(Mayang Pongkai, Pongkai Baru and Pongkai Istiqomah).

Except people in Mayang Pongkai and Muara Mahat Baru villages, other people refused to move to PIR plantations and demanded to be resettled in the places as close as to their ancestral lands. As a result, they were allocated the resettlement sites as well as 2 ha rubber plantations and 0.4 ha “palawija” in the surroundings of the reservoir.

However, as mentioned already, at the time of resettlement, in most of plantations, the seeds were not planted or only a few rubber trees were found along the roadsides. As to the situation of rubber plantations in Pulau Gadang village, SAPS Team of JBIC reports as follows;

“When they entered the new land, they found out that only part of the land, which were planted with a new growing rubber tree by the contractor. Many rubber trees were left just beside the road and even some others were found to be piled up in a swamp.”⁴⁴

Although the Government had made a promise to provide PAFs semi-permanent houses,⁴⁵ such a promise was not kept. The houses prepared by the Government in the resettlement villages were the same with “the houses of transmigrants in size and quality”. In addition, most of them were covered by trees and high grass since they had been constructed half year ago. Some of them also were located in the swamp areas.

In Pongkai Baru village, about 30 houses were constructed in the swampy lands. When the rain came, they were flooded. For that reason, some families reconstructed their houses to heighten floors or moved to the higher lands to construct their new houses. They had to bear costs by themselves. But, other poor families are obliged to stay there without any house improvement.

Until now, in the resettlement villages, a number of families have repaired or reconstructed

43. SKEPHI, *ibid.*, p.20.

44. SAPS Team Report, *op.*, cit. p.A3-3.

45. It means the type of house the basic parts of which are made from stone or cement and the upper parts are made from wood.

their houses. However, many families, especially poor families have lived in their original houses with the 6 x 6 meter scale. Among the latter families the most serious problem is that wooden walls have been decayed, floors of thin cement are broken and roofs are rusting and leaking. When the rain comes, they can not find shelter from raindrops in their rooms.

In many resettlement villages, roofs of the houses are made from zinc. However, as mentioned already, in some villages, houses are asbestos roofs. In addition, in Riau Province, roofs of public facilities such as schools, local government offices and public meeting houses are made from asbestos plates. At the present time more than ten years after their construction, they become broken at many parts. The health hazard of asbestos is a great concern among villagers.

Attention must be paid to the long-term impacts of asbestos on human health. In this respect, no measures, including the removal of asbestos materials and the early warning systems to the potential health hazards of the materials, have been taken by the central and local governments until now.

Another serious problem is lack of income generation opportunities. In many villages, 2 ha rubber plantation is not a source of income. One of reasons is that rubber trees are too young for tapping. Another reason is that most of rubber trees have been lost by wild pigs, deer and white ants(anai-anai). For that reason, most of villagers are obliged to get their daily income by means of stone collection, illegal logging, reservoir fishing, plantation laborers and so on. However, their income is usually only at the level of Rupiah 30,000~50,000. Many of them are now in the status of bonded laborers. They are difficult not only to get their daily foods but also to send their children to schools.

Difficulties of living conditions are the same in the resettlement villages of Mayang Pongkai and Muara Mahat Baru. In these two villages, people are getting their income by means of production of oil palm. However, nowadays, more than ten years after oil palm trees were planted, the production level of oil palm is starting to decline. Therefore, they must be replanted. However, in order to get income from newly planting trees, villagers must wait for 4~5 years. During that period, they have no alternative income sources.

An unemployment problem is common in all resettlement villages. In particular, among young people this problem is terribly serious. It is originated from two main reasons. One is the production basis of the monoculture type in the resettlement villages. Villagers must depend their living bases upon production of single commodity, namely rubber or oil palm.

Another reason is the non-existence of extra lands in the resettlement villages. In the resettlement process, no consideration was paid to the traditional communal land system of the "Minangkabau" community which is called as "tanah ulayat". In the old villages, "tanah ulayat" was under the common use of all villagers. It also played a role as a buffer zone of the population increase. However, in the new villages, this type of communal lands does not exist. Therefore, there are no extra lands which are able to be allocated to the young people. Even after they get married, they must depend their lives upon lands allocated to their parents. Usually, the new

couple engages in the cultivation of 2 ha rubber/oil palm plantation and 0.4 ha crop yard (palawija) of wife's parent. Therefore, more than two families must live under the limited lands.

The new couples also must live with their parents, because the new separate houses for them are not allocated by the government. Therefore, within the narrow houses, they must live with their wife's parents, brothers and sisters.

In addition, many villagers are faced difficulties to get clean and safe water. In this respect, the most serious village is Batu Bersurat. In this village, the soil conditions for digging wells are terribly bad because of the existence of the stratum of hard rocks which is called as "napal". For that reason, many people in this village depend their daily needs of water upon the collection of rainwater even at the present time.

For the sake of lack of water, people in most villages are faced to difficulties of having access to the appropriate MCK (Mandi, Cuci dan Kakus).⁴⁶ Especially, many poor families have no sanitary toilet facilities in their houses.

The most prevalent diseases in the resettlement areas are the diarrhea and skin diseases. Both diseases are originated from unsafe drinking waters.

In some villages such as Pongkai Baru and Balung, even PUSKESMAS (Pusat Kesehatan Masyarakat)⁴⁷ is not instituted by the Government. For that reason, when villagers get sick, they must be taken outside of the village to restore their health. However, especially at night, it is difficult to take the patient to the outside hospitals. In these villages, a number of people die due to no opportunity for treatment of simple curable diseases. Therefore, the death rate of people is very high.

(3) Lack of the Consideration to the Economic/Social Systems of the "Minangkabau" Community

One of complaints to the Government in the resettlement process was lack of the consideration to the economic/social systems and the tradition/culture of the "Minangkabau" community. Among others, resettlement works were carried out without paying attention to the traditional communal land system of "Minangkabau" community, namely "tanah ulayat". When people resettled to the new villages, they were disappointed at the non-existence of "tanah ulayat".

No compensation was paid to the confiscation of "tanah ulayat". In the new villages, since there is no "tanah ulayat", farming and plantation lands for future generations are no longer available.

In addition, disregard of the traditional "tanah ulayat" system is one of causes of land disputes between the neighboring villages. Such a land dispute occurs between Tanjung Pauh and Tanjung Balit villages because the former was established on the "tanah ulayat" of the latter. At present, the latter village asks for the return of lands to the former village.

46. bathing, washing and latrine.

47. local governmental clinic.

Similarly, a border dispute over “tanah ulayat” occurred between Gunung Bungsu and Tanjung villages because a part of the former had been established on the “tanah ulayat” of the latter. People of the latter village took action of felling trees planted by residents of the former village, and thereby the conflict became worsened. This problem was brought to the court. According to the court decision, the former village paid the land fee to the latter village.

Moreover, in Mayang Pongkai village, land disputes occur among the resettled people, the transmigrants from Java and the original dwellers. The original dwellers claim the landownership of lands allocated by the Government to the resettled people. On this problem, SAPS Team reports that in this village 38 households are suffering conflict with the local people and the promised lands are not yet allocated to them.⁴⁸

These land disputes are a result of the careless resettlement policy by the Government. In particular, the disregard of the traditional communal land systems by the Government brings unhappy conflicts among people.

A careless introduction of “transmigration”-type policy is another cause of the appearance of a number of the destitute in the resettlement villages. The economic conditions in the resettlement villages are extremely bad. Each family was provided 2 ha plantation. However, as mentioned already, most of rubber plantations were in the state of bushes. And the subsequent replanting works have not been successful. For that reason, most of people can not get their income from their rubber plantations.

Each family also was allocated 0.4 ha crop yard (palawija). However, most of the lands are located at slant rocky hillsides or at swampy peatlands. In those infertile lands, it is very difficult to grow crops, vegetables and fruits. Therefore, vast lands remain unused.

Moreover, in the time of resettlement, clean and safe water systems were not prepared. Afterwards, public water supply (HU, Hydrant Umum) systems were introduced in many resettlement villages. However, most of HU systems have not well functioned. In many villages, HU parts such as water pumps, intake tanks and pipe networks leave broken down. Some of intake tanks are moved to the kitchens of villagers or mosques/musholla to store rainwater. Therefore, many people can not get clean and safe water even at the present time.

The application of “transmigration”-type policy to the resettlement villages creates a variety of serious social impacts. One of such impacts is the degradation of the social status of traditional leaders, among others the decline of the social role of “nirik mamak”, within the village community

Such a situation is originated from three reasons. One is due to the distribution process of houses in the resettlement villages. The living sites were decided by “undian”(ballot) under the auspices of the relocation committee of each village. As a result, members of the same “suku”(clan) were obliged to live separately each other so that their social ties were disrupted to a considerable

48. SAPS Team Report, op., cit. p.A3-60.

degree. Therefore, “nirik mamak“ becomes difficult to play a coordination role and hold “mushawaharah”⁴⁹ meetings. On this problem, Professor Syafruddin Karimi of Andalas University states as follows:

“Relocation to the new villages affects the order of neighborhood. There is no certainty that every clan maintains its members to reside in the same neighborhood. The people was allowed to choose their neighborhood. The committee allocated a house to a household by using ballot. People had to accept. At present, the members of neighborhood do not necessarily belong to the same clan like it normally was. Certainly, the traditional bond of neighborhood tends to reduce. Nirik mamak may find his clan members scattered to several neighborhoods which is no longer so easy to reach. This might reduce the power of nirik mamak in the future to coordinate his members.”⁵⁰

Second reason is due to the unequal distribution process of houses. Most of the community leaders including “nirik mamak“ did not participate in the ballot. Before ballot, they preoccupied their living sites with the more favorable conditions such as a main roadside. Therefore, they lost trustworthiness of villagers.

Third reason is due to the involvement of “nirik mamak“ to the compensation process. At present, many “nirik mamak“ are accused of corruption. Therefore, they have lost their social status as spiritual leaders. As to the case of Tanjung village, the SAPS Team reports as follows;

“The negative impacts instigated by the Kotapanjang HEPP project include deterioration of social ties due to ambiguities in the compensation process. This state of affairs is attributed to the presence of ‘compensation middlemen’; hence many rightful owners have never received the compensation money that the government paid out. This in turn has instigated many of the people not to trust their own Village Elders(‘nirik mamak’) anymore.”⁵¹

This state of affairs brings mutual distrust and degradation of moral standards among villagers. Without the recovery of moral integrity the real rehabilitation of PAFs will be impossible.

(4) Lack of the Consideration to the Traditional Culture of the “Minangkabau” Community

Lack of water has brought another serious social and cultural impacts on the resettled people. Before the resettlement, people lived along the rivers, especially along the Kampar Kanan river and the Mahat river. They were literally “manusia sungai”(river people). They practiced environmentally sound farming mainly at the fertile riverside lands. They did not overexploit

49. In the “Minangkabau” community, every decision-making is made through “mushawaharah” (consultation) among participants in the meeting. Everything is decided by consensus among participants. This way of decision-making is a contrast to Western-style democracy in which a decision is made through majority voting.

50. Syafruddin Karimi, op. cit., pp.14-15.

51. SAPS Team Report, op., cit. Appendix 2.1(*PRA meeting Record*), p.A2-130.

their lands and did not use chemical fertilizer and pesticide. In that sense, they were “ecosystem people”. They were also very religious and devoted to Islam. Their daily life and tradition/culture linked closely with rivers.

However, nowadays, there are no big rivers as the sustainers of life around their living places. For that reason, many traditional customs and events have not been done at present. One of them is the custom of “Balimau”. It was used for them to clean their bodies in the rivers before “Ramadan”. However, today, there are no appropriate big rivers to be used for “Balimau”.

In the past, on 7th day after a baby was born, it was used for the family and their relatives to take the baby to the river and to clean his/her body. This ceremony was called as “turun mandi”. However, at present, there is no river to carry out this ceremony.

Similarly, a number of social events have not been held any more. A typical example is the traditional boat race event which is called as “Pacu Sampan”. “Pacu Sampan” was annually held in the form of village-village match. But, now, this event is not held because of non-existence of big rivers.

In the resettlement areas, since there are no pasture lands and rivers, villagers can not breed “kerbau”(water buffalo). That situation has brought out the change of life style of villagers. Its minus effects are significant in terms of not only economic but also cultural impacts. A typical example of the latter is the traditional event of “Hari Raya Korban”. In order to do this traditional event, people must buy “kerbau” from the outside villages or substitute “kambing”(goat) for them.

There are also little “sawah”(paddy fields) in the resettlement areas. For that reason, the traditional ceremonies related to the paddy cultivation have been lost at present. A typical example is the ceremony of “mintak-mintak” which was held under the auspices of “ninik mamak” before planting rice seeds. Nowadays, this ceremony has not been carried out in any new village.

(4) Loss of Historical/Cultural Heritage

The project site of the Koto Panjang Dam reservoir was of historical/archaeological importance. In 9-12 century a Kingdom of Buddhism/Hindu, which is called as Sriwijaya Kingdom, enjoyed its prosperity in this region. The reign of the Kingdom extended from the project site to present Jambi Province and Palembang.

At the golden age of Sriwijaya Kingdom, a complex of temples which is called as “Candi Muara Takus”⁵² was constructed at the bank of Kampar Kanan river. It is the largest ancient remains in Sumatra. And it is the third largest temple in Indonesia after Borobudur and Prambanan in Central Java. It is of extreme importance in knowing the coming route of Buddhism/Hindu from India to Indonesia

52. Candi Muara Takus” was composed of six temples. However, at present, only four temples remain. They are Candi Mahligai, Candi Bungsu, Candi Tua and Candi Plangko.

In order to preserve these historical temples, the planning of the project was slightly altered according to the suggestion of the Minister of Environment at that time, Emil Salim. That is to say, although the high water level of the reservoir was initially planned at 100 m above sea level, this height was reduced to 85 m because the temples locate at the height of 86.25 m. And in F/S, it was proposed to construct some banks around the temples for preventing water penetration into the temple yard in flood times. Such a measure was also confirmed in RKL and RPL.

However, strangely, in reality, a series of planned banks was not constructed. At present, the banks are not found anywhere. Fortunately, as a result of the low water level of the reservoir the temples are not suffered damages of water penetration. But, there remains a question: "To where the budget for construction of banks was diverted?"

In addition, it must be pointed out that no consideration was paid to other remains of historical/archaeological importance in the region. For instance, in Pongkai village there remained a big hole. That hole was presumed as the remaining location of having taken soil for the purpose of making bricks for the construction of Candi Muara Takus.

The village name itself had a historical meaning. "Pongkai" is originated from Chinese language. In Chinese, the word "pong" means "engaging in" and "kai" means "digging". In this village, works for "engaging in" "digging" clay which was a raw material for making bricks were carried out. It also implies that some Chinese Buddhists visited there in ancient times.

The name of Batu Bersurat also connotes a historical meaning. The word "batu" means "stone" and "bersurat" means "written". That is to say, in Lubuk Agung, which was a part of Batu Bersurat, there was a monument of a "written stone".

In Batu Bersurat village, there existed many other historical/archaeological remains. For example, a hill which was called as "Bukit Kemala Kewi" was considered as a cemetery place of Kemala dynasty and Kewi dynasty of Sriwijaya Kingdom. In addition, in this village, there was a big stone which was named as "Batu Tikam Keris"(sword thrust stone). It was seen as an evidence of the invasion of "Batak" people's army upon the Kingdom.

In the implementation process of the Koto Panjung Dam project, no research activities including excavation works were carried out. So, countless archaeological and cultural sites were inundated by the reservoir.

In addition, it must be pointed out that in the old villages there were a number of mosques of historical importance. And also there were several famous "Makam Syekh"(public cemeteries named after Islamic saint) such as Abdul Ghani in Batu Bersurat village, Jaafar in Pulau Gadang village and Abdur Rahman in Tanjung Alai village.

People demanded strongly of the Government to relocate these mosques and public cemeteries to the new villages. In the "Surat Permohonan"(letter of appeal) to the Government which was expressed on 19 December 1983 by community leaders of eight villages in Riau Province, the relocation of mosques and public cemeteries of historical importance was included among seventeen conditions to move to the new villages. As a seventh condition, it was stated that "the

Government should construct facilities such as mosques/religious buildings, markets, as well as facilities to provide both a reliable electricity and a clean water supply". And as a thirteenth condition, it was stated that "historical graves should be moved to the new settlement."⁵³

However, that demand was not met. As a result, those mosques and graves were not moved to the new villages. Instead, the Government constructed mosques and "musholla" in the resettlement villages. They were poorly built. For instance, the mosque in Pongkai Baru was built by the Government in the wrong direction of Mecca. Accordingly, villagers abandoned to use it and constructed a new mosque by themselves.

5. Main Argument Points in the Japanese Court

(1) Forced Resettlement

One of the argument points in the Court is whether PAFs agreed or not to relocate from their living places to the resettlement villages. As mentioned already, the relocation agreement of each family was one of three conditions for disbursing OECF loans.

On this point, the defendants claimed that such an individual agreement had been obtained by the Indonesian Government before the loans were disbursed. As an evidence for justifying its argument, the Japanese Government presented to the Court a document entitled "Comments on Main Points of Discussion" which had been presented to the Japanese Government by the Indonesian Government on 23 September 1991.

In that document, it was reported that "agreement already reached with PAFs" and "total of PAFs is respectively 4,152 in Riau and 734 in West Sumatra Province". And, it was stated that those agreements were obtained in Riau Province on 22 January 1991 and in West Sumatra Province on 13 December 1990.⁵⁴

However, there is a doubt about the trustworthiness of this document. First, it must be pointed out that until now the defendants have not presented the signature papers of PAFs to the Court. Did the Indonesian Government actually collect the signature papers of the relocation agreement from 4,886 PAFs?

In order to meet the first condition, namely the relocated people's consent, both local governments of Riau and West Sumatra Provinces organized in 1990 "Team Penyuluh" (Illumination Team) respectively. In the case of Riau Province, the "Team Penyuluh" was composed of 34 government officials. The head of the Team was the Governor of Kampar district at that time, Saleh Djasit.

The main purpose of the Team was to persuade PAFs to accept the resettlement and to develop the smooth relocation operations. In order to achieve these purposes, a "pedoman"(guideline)

53. Surat Permohonan(letter of appeal) adopted at Batu Bersurat on 19 December 1983.

54. Department of Mines & Energy, *Comments on Main Points of Discussion*, 23 September 1991,p.1.

concerning “penyuluhan”(illumination), “pemindahan”(relocation) and “pemukiman kembali” (resettlement) of PAFs was formulated on 20 November 1990. In this guideline, it was stated that a circumstances in which the dam construction was based on demand of all communities should be formed through illumination activities.⁵⁵

Under the guideline, the “Team Penyuluh” in Riau Province was under the duty of collecting “Pernyataan Kesiediaan Pindah”(Letter of Acceptance to Move) and “Inventarisasi Pemilikan Penduduk”(Property Inventory of Residents) from 15 December 1990 to 14 January 1991.⁵⁶ However, it was impossible to collect signatures of the relocation agreement of all PAFs during only one month.

It was only small number of village leaders that signed in practice to “Pernyataan Kesiediaan Pindah”. The result of interview research of Professor Syafruddin Karimi proves the fact that a number of PAFs did not sign “Pernyataan Kesiediaan Pindah”. He says as follows;

“It is interesting to note that more than one-third of all respondents do not answer the question when they signed the agreement to relocate. It is likely that they do not know exactly whether or not they signed the agreement to relocate. It is also possible that they just agreed without having to sign anything or other people did it for them. Because it is also popular among the people that ‘agree or do not agree you have to relocate’. Those who do not answer whether or not they signed the agreement might belong to that category. Nevertheless, the reality indicates that they have agreed to relocate and are now living in the new villages.”⁵⁷

Second, at that time, most of villagers were not actually requested to sign “Pernyataan Kesiediaan Pindah”. Instead, many manipulations were tried by the Indonesian Government to fulfill the three conditions. On 7 May 1991, SKEPHI reported that the fulfillment of three conditions was manipulated by the Governor of Riau, Soeripto and the head of the project. According to SKEPHI, they said that “the first condition can be easily met” and “the signatures of individual family in their pocket”.⁵⁸

As mentioned already, on 9 September 1991, two representatives of villagers made a press conference at Tokyo and distributed a paper for making an appeal to the Japanese Government and people. In that paper, it was said as follows;

“Members of the Koto Panjang Solidarity Action Committee stayed in the villages of the dam site area for several months and found that requirements set by the OECF have already

55. Pemerintah Kabupaten Daerah Tingkat II Kampar, *Pedoman Penyuluhan Pemindahan dan Pemukiman Kembali Penduduk yang Terkena Proyek PLTA Koto Panjang Kecamatan XIII Koto Kampar Kab Kampar*, 1990, p.5.

56. *ibid.*, p.7.

57. Syafruddin Karimi, *op. cit.*, p.19.

58. SKEPHI, *Some Concerns on the Construction of Koto Panjang Dam in Sumatera*, 7 May 1991.

been manipulated by the government authorities. Not all villagers have signed a statement of consent. Most of the people have no memory of signing such a statement since the government did not fully explain the situation, while others were intimidated by being informed that if they did not sign the statement immediately, they would never receive any compensation. Others were persuaded to sign with promises of large compensation and a brighter, more prosperous future. The people have never been given the choice of remaining, but instead, were only given the choice of being relocated.”⁵⁹

Two representatives left Japan and went back to Indonesia on 22 September 1991. On the following day, the Indonesian Government presented the afore-mentioned document to the Japanese Government. Therefore, the document must be viewed as a highly political one for refuting what they stated at the press conference. Therefore, that document does not evidence that the consent of relocation was received from all villagers.

(2) Military Intervention

The real work of the above-mentioned “Team Penyuluh” was not to collect the signatures of the relocation agreement of PAFs but to persuade them to accept the relocation/resettlement, in other words to intimidate not to oppose to the relocation/resettlement. In order to achieve this objective, under the “Team Penyuluh”, a working team for actual operations which was called “Satkorlak Pemandahan”(Relocation Coordination Team) was organized in each Province. The Team was composed of government officials, military officials and police officials. The main task of the Team was to keep the security in the relocation villages, especially to oppress the anti-dam movements.

For that purpose, members of “Satkorlak Pemandahan” attended every official meeting held by Bupati(district head), Camat(subdistrict head) and Kepala Desa(village head). Their attendance put psychological pressure upon villagers. Accordingly, villagers had to refrain from expressing their opinions.

Another measure for putting psychological pressure upon villagers was an arrangement of soldiers in villages. In each village, a soldier who was called as “Babinsa” was arranged to live. Their main task was to watch the movements of villagers. They attended every official meeting in wearing their uniforms or casual clothes. They also moved to the new villages together with villagers and stayed there until around 2000.

It must be added that a military station KORAMIL(Komando Rayon Militer)⁶⁰ was instituted at old Batu Bersurat village, the biggest relocation village. In KORAMIL, 4~5 soldiers were always stationed. In the resettlement process, especially when troubles occurred over the payment of compensation, members of KORAMIL were frequently invited by Kepala Desa to play

59. *Appeal to the Japanese Government and People from the Koto Panjang Solidarity Action Committee, Indonesia*, 9 September 1991.

60. Military Headquarter at the subdistrict level.

a “meditative” role. KORAMIL moved to new Batu Bersurat village.

At the time of the relocation of Pulau Gadang village, which was the first relocation village, in August~September 1992, about 100 soldiers were mobilized and stayed at both old and new villages. They were soldiers of “Batalyon 132 Bima Sakti Salo“ which stationed at Bangkinang. They stayed at the old village about one week and at the new village two weeks.

This incident put big psychological pressure upon residents in other villages. At the time of the relocation of other villages, although the military was not mobilized actually, people were afraid of a possible military intervention when they resisted moving to the new villages.

In spite of the above-mentioned facts, during the Court proceedings, the defendants, particularly the Japanese Government, insisted that people had not been forced to relocate and that there had been no intervention by the Indonesian military in the resettlement process.⁶¹ But, this argument is not compatible with its own documents which were presented to the Court by the defendants. Some of those documents mentioned to the forced relocation and the military intervention in the resettlement process. In this respect, particularly interested is the research result of the SAPS Team of JBIC.

Concerning the resettlement process of Pulau Gadang village, the SAPS Team reports that “during migration until one week after, they were accompanied by military that sometimes shot their gun”.⁶² The Team also mentioned to the military intervention in the resettlement process of Batu Bersurat village. Its report says as follows;

“The realization for compensation received by the community was implemented in force and without any consultation or discussion to reach agreement for the money of compensation. They were forced to receive the price of compensation paid by the government. If they did not accept it, they were intimidated and forced to remove by implementation of team (Satkorlak)Team functioning to be the security instrument of the government. According to the community, the Satkorlak Team comprises of various units from the military forces.”⁶³

As mentioned already, although this SAPS Team Report was not submitted to the Court by JBIC, but by the plaintiffs, it clearly admits the military intervention in the resettlement process. In that sense, the argument of non-intervention of the military by the defendants is not compatible with the contents of SAPS Team Report.

(3) Excuse of Domestic Matters

One of excuses of the defendants in the Court is that the Japanese Government only lent money to the Indonesian Government for the construction of the Koto Panjang Dam project. In this context, the defendants claim that the matters concerning the resettlement of PAFs and the

61. Preparatory Pleadings of the Japanese Government, op. cit., pp.4, 17 and 19.

62. SAPS Team Report, op. cit., p.A3-1.

63. *ibid.*, p.A3-32.

environmental protection are the internal affairs of Indonesia.⁶⁴

However, this argument is not compatible with the past practices of the Japanese Government in financing the Koto Panjang Dam project. In the implementation process of the project, the Japanese Government sent at several times its observation/monitoring missions to Indonesia and among others asked for taking measures for the improvement of the resettlement villages. For that purpose, in response to the appeals of financial shortage by the Indonesian Government, the Japanese Government agreed to divert a part of "Sector Program Loans" in 1991, 1992 and 1993 to the Koto Panjang project. Total amount of the allocation to the project was approximately 2,200 million yen(See Appendix 1). Most of money was used for creating the resettlement villages.

In addition, it must be pointed out that at the time of impounding the reservoir, the Japanese Government made strong protests to the Indonesian Government on the ground that the resettlement problems had not been solved adequately.

On 3 March 1997, the Chief Representative of Jakarta OECF Office, Yozo Sakai, sent a letter to the Minister of BAPPENAS⁶⁵ at that time, Ginandjar Kartasasmita. In that letter, it was stated as follows;

“1. We are informed that PT. PLN has conducted the ceremony for impounding of captioned project on February 28 and they stated that it is ready for impounding starting from March 1, 1997.

2. We are happy to know that physical construction was well progressed enough to execute impounding work. However, we have an opinion that the settlement of measures for Project Affected Families(PAFs) would be indispensable for the successful implementation of the Project.

3. Therefore, it would be highly appreciated if BAPPENAS could arrange the national coordination meeting represented by all the duly authorized people to solve remaining issues.”⁶⁶

In spite of the above-mentioned protest by OECF, PLN started impounding the reservoir. For that reason, on 13 March Yozo Sakai sent a letter to Ginandjar Kartasasmita in which it was stated as follows;

“With respect to the captioned project, we were informed that PT. PLN conducted the actual impounding works yesterday. I am deeply disappointed to know this fact since it is not in line with our mutual understandings.”⁶⁷

In the Court proceedings, the chief judge raised two questions on this impounding process to the defendants. First, if the resettlement works were the domestic matters of the Indonesian

64. Preparatory Pleadings of the Japanese Government, *op. cit.*, p.10.

65. Badan Perencanaan Pembangunan Nasional(National Development Planning Agency)

66. Letter to BAPPENAS by OECF, 24/B/BAPPENAS/OECF/3/97, 3 March 1997.

67. Letter to BAPPENAS by OECF, 22 /A/BAPPENAS/OECF/3/97, 13 March 1997.

Government, why OECF made protests to BAPPENAS? What was the legal basis of the protests? Second, ten days later after the first protest, PLN started impounding the reservoir, but at that time the situation of the resettlement villages was not improved, then why the Japanese Government accepted the impoundment?

The defendants could not answer to these questions. And, even until now, the defendants have not made efforts to clarify the acceptance process of the impoundment.

(4) Disclosure of Loan Contracts

As mentioned already, three conditions were included in the Loan Contracts concerning the Koto Panjang Dam project. Therefore, the disclosure of these contracts are decisively important in forming a judgment on the question of whether “due care” was paid by the defendants to the relocated people’s consent, their acceptance of the compensation criteria and the environmental protection.

With respect to the legal character of the Loan Contracts, on one hand, the defendants claim that they are “private contracts”.⁶⁸ On the other hand. They say that those contracts are the “diplomatic secret documents”⁶⁹. These arguments are contradictory each other.

The Loan Contracts are not the same with lending agreements by the private banks. They are the international public contracts between the Indonesian Government and OECF(JBIC). They are a kind of international treaties/agreements.

International treaties/agreements are under the principle of the prohibition of secrecy. The principle of the prohibition of secret treaties/agreements was first introduced in Article 18 of the Covenant of the League of Nations and is now inherited in Article 102 of the Charter of the United Nations.

As a reason of justifying non-disclosure of the Loan Contracts, the defendants claim that if they are disclosed, the good relationship between the borrowing country and the lending country will be hurt. And, if lending conditions such as the interest rate, repayment period will be open, it will make an international comparison possible and will make a door open for protests from other countries with unfavorable conditions.

However, this is not a persuasive argument. Even if the Loan Contracts are disclosed, there is no fear that the diplomatic relationship between Indonesia and Japan will be hurt. On the contrary, transparency of lending conditions will contribute to the eradication of the unfair transactions.

In addition, this argument is against the principle of accountability concerning the use of the public money. It must be noted that the Japanese Government takes a responsibility of making

68. Third Preparatory Pleadings of the Japanese Government, 8 December 2003, p.5 and Third Preparatory Pleadings of JBIC, 11 December 2003, p.7.

69. *ibid.*, p.4 and p.8 respectively.

the use of the public money accountable to the taxpayers.

(5) Disclosure of Appraisal Report and Reappraisal Report

During the process of the Court proceedings, the defendants have refused to present to the Court not only Loan Contracts but also other basic documents such as loan contract on E/S, D/D report, Appraisal Report, Reappraisal Report, Record of Discussions(R/D), loan contracts on Sector Program Loans. Among these documents, the Appraisal Report and the Reappraisal Report are of particular importance because they are essential evidences in judging whether or not “due care” was paid by the defendants to human rights and environmental protection at the stage of decision-making of financing.

At the stage of the appraisal of the project, what considerations were paid by OECF to the economic/social systems and traditional/cultural life style of “Minangkabau” people ? Was “due care” paid to the biological diversity and historical/archaeological remains of the region ? What judgment was made by OECF about the rehabilitation possibility of PAFs at the resettlement sites under the “transmigration” type policy ? These problems are not clear without being given an opportunity to see the Appraisal Report.

As mentioned before, in response to criticisms and protests by the Indonesian and Japanese NGOs, OECF dispatched the reappraisal mission to Indonesia in September 1990. What were the research results ? As a result, were some remedial measures taken ?

If “due care” was not paid by the defendants to the basic human rights of PAFs and the conservation and preservation of the natural ecosystem of the region in these decision-making processes, then it might be said that they are liable for human and environmental damages. In this sense, the disclosure of the Appraisal Report and the Reappraisal Report is indispensable in judging whether the fault, negligence or idleness on the side of the defendants existed or not.

The Japanese Government has emphasized heightening the openness of ODA. In its Annual Report of 1995, it said as follows;

“The government is urging recipient countries to enhance the transparency of their administration of Japan’s ODA projects and strengthen their sense of accountability for their actions to meet the growing expectations of the Japanese people.”⁷⁰

It is very ironical that while the Japanese Government talks about the transparency and accountability of ODA, it refuses to submit the basic ODA documents to the Court.

(6) Applicability of Internal/International Legal Norms

In the course of the Court discussions, the defendants have refused to admit their legal responsibility on the rehabilitation failure of PAFs and the environmental destruction with respect to the Koto Panjang Dam project. One of their excuses is that there is no basic law regula-

70. Ministry of Foreign Affairs, *Annual Report of Japan’s ODA*, 1995, p.54.

ting ODA in Japan and that the “OECD Environmental Guidelines”⁷¹ have no legal binding force.

It is true that until now the basic law regulating ODA has not been enacted in Japan. However, it does not mean that the governmental and semi-governmental officials are free from human rights abuse and environmental destruction. They are under the obligations of paying attention to the internal/international legal norms concerning basic human rights and environmental protection.

In this context, it must be noted that the “ODA Charter of Japan” was drawn up by the Cabinet on 30 June 1992. Its formal announcement was after the financing of the Koto Panjang Dam project. However, the original ideas of the Charter were already expressed at the Parliament on 10 April 1991 by the Prime Minister at that time, Toshiki Kaifu. The ODA Charter said as follows;

- “1. Environmental conservation and development should be pursued in tandem.
2. Any use of ODA for military purposes or for aggravation of international conflicts should be avoided.
3. Full attention should be paid to trends in recipient countries’ military expenditures, their development and production of mass destruction weapons and missiles, their export and import of arms, etc., so as to maintain and strengthen international peace and stability, and from the viewpoint that developing countries should place appropriate priorities in the allocation of their resources on their own economic and social development.
4. Full attention should be paid to efforts for promoting democratization and introduction of a market-oriented economy, and the situation regarding the securing of basic human rights and freedoms in the recipient country.”⁷²

Certainly the ODA Charter is not a legally binding law. However, it has a para-legal character which might be called as a “soft law” for regulating the actions of the governmental and semi-governmental officials. They must act within the framework of the Charter. When requirements embodied in the Charter can not be met, the governmental and semi-governmental officials must refrain from acting against them.

In this respect, particularly noted in the Charter is the reference to “environmental conservation” and “basic human rights and freedoms”. In view of these requirements, ODA financing for the Koto Panjang Dam project did not conform to them.

Japanese ODA also must be subject to the guidelines of OECD(Organization for Economic Co-

71. In October 1989, OECD published its “Environmental Guidelines”(1st edition). Therefore, these guidelines should have been applied to the financing to the Koto Panjang Dam project. Afterwards, in August 1995, OECD revised these guidelines and published its 2nd edition. After the merge of OECD and JEXIM, JBIC published its “Environmental Guidelines” in October 1999. Then, in April 2002, JBIC revised its Guidelines and published its “Social/ Environmental Guidelines”.

72. Ministry of Foreign Affairs, *Annual Report of Japan's ODA*, 1992, p.193.

operation and Development). In 1991, DAC (Development Assistance Committee) of OECD drew up its “Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects.” Paragraph 6 of OECD Guidelines says as follows;

“Resettlement planning should take into account the following basic policy considerations:

(a) Involuntary population displacement should be avoided or minimized whenever feasible by exploring all viable alternative project designs. In every case, the alternative to refrain from carrying out the project (the “non-action” alternative) should seriously be considered, and people’s needs and environmental protection must be given due weight in the decision-making process. Where displacement is unavoidable, resettlement plans should be formulated with due care given to people’s needs and to environmental protection. Donor countries should not support projects that cause population displacement unless they contain acceptable resettlement plans protecting the rights of affected groups.

(e) Indigenous groups, ethnic minorities, and pastoralists who may have informal customary rights to the land or other resources taken for the project must be provided with adequate land, infrastructure, and other compensation. The absence of legal title to land by such groups should not be a bar to compensation.”⁷³

In the following year, DAC of OECD issued “Guidelines No.3” for supplementing the afore-mentioned Guidelines. The “Guidelines No.3” stated that “the population displaced by a project receives benefits from the changes and that it is re-established on a sound productive basis.”⁷⁴

Japan is a member country of OECD. Accordingly, Japan must act in line with these guidelines. However, in practice, Japan did not follow to these guidelines. In this respect, it should be noted that at that time the drafters of these guidelines had in their minds on Japanese financing to the Koto Panjang Dam project. Therefore, these guidelines connoted the meaning of warning to the Japanese Government. In spite of their warning, the Japanese Government decided to finance the project without paying attention to those guidelines. In particular, in financing the Koto Panjang Dam project, the Japanese Government did not explore the “non-action” alternative and did not pay “due care” to people’s needs and to environmental protection. In addition, the Japanese Government did not take into account “informal customary rights to the land” of “Minangkabau” people.⁷⁵

Above-mentioned ODA Charter and OECD guidelines belong to a category of “soft laws”. How-

73. DAC of OECD, *Guidelines on Aid and Environment*, OCDE/GD(91)201, 1991.

74. DAC of OECD, *Guidelines on Aid and Environment*, No.3, 1992.

75. “Tanah ulayat” is land rights of “pusako”(inheritance) based upon “hukum adat”(customary laws). Therefore, it is also called as “tanah adat” or “tanah pusako”.

ever, there are some “hard laws” concerning human rights and environmental protection. In the field of human rights, particularly important is Article 27 of the “International Covenant on Civil and Political Rights”(B Covenant). Article 27 of the Covenant stipulates as follows;

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

Since Japan is a member country of this Covenant, it is under the obligation of respecting the rights of minority people. Undoubtedly, PAFs of the Koto Panjang Dam project were minority people in Indonesia, namely “Minangkabau” people. They were denied “to enjoy their own culture” under the application of the “transmigration” type policy. The Japanese Government backed up and supported the implementation of this policy with its financial assistance. Therefore, Japan committed a direct violation of Article 27 of the B Covenant.

In the field of the environmental protection, the “Convention on Biological Diversity”⁷⁶ is of particular importance. As saw already, since “the lowland forests of Riau contain the highest biodiversity of any forests on Earth”, this area should not be submerged by the dam construction.

In the field of the protection of the historical/cultural heritage, the “Convention Concerning the Protection of the World Cultural and Natural Heritage”⁷⁷ is relevant to the Koto Panjang Dam project. In view of this Convention, the surrounding area around “Candi Muara Takus” should not be submerged by the reservoir but should be designated as a World Heritage.

In the field of human health, the “Convention Concerning Safety in the Use of Asbestos”⁷⁸ is relevant to PAFs. Although Japan was not a member country of this Convention at the time of the implementation of the Koto Panjang Dam project, at least it should have recommended to the Indonesian Government not to use asbestos roofing in the resettlement villages. In that sense, its condonation is in contravention of the basic spirit and purpose of the Convention.

It can be said that the principle of prohibition of the forced relocation and the principle of the relocated people’s consent are the customary international laws. In this context, particularly interesting is the “Convention Concerning Indigenous and Tribal Peoples in Independent Countries”(Convention No. 169) which was adopted by ILO on 24 June 1989. Paragraph 1 of Article 14 of this Convention says as follows;

76. This Convention, together with the “Framework Convention on Climate Change”, was adopted at the United Nations Conference on Environment and Development (UNCED), the so-called “Earth Summit”, which was held at Rio de Janeiro on 3–14 June 1992.

77. This Convention was adopted at UNESCO (United Nations Educational Scientific and Cultural Organization) on 16 November 1972 and entered into force on 17 December 1975.

78. This “Convention was adopted at ILO (International Labour Organization) on 24 June 1986 and entered into force on 16 June 1989.

“The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.”

Article 16 of the same Convention refers to the principle of prohibition of the forced relocation and the principle of the relocated people’s consent. It says as follows;

“1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.”⁷⁹

Japan is not a member country of this Convention. However, since this Convention might be regarded as embodying the customary international laws, Japan is seemed to be under the obligation of respecting the principle of prohibition of the forced relocation of “indigenous and tribal peoples” and the principle of their consent in the case of their relocation. Therefore, under the customary international laws, the relocation of “indigenous and tribal peoples” must be “an exceptional measure” and such a measure must be taken “with their free and informed consent.”

However, in the case of the Koto Panjang Dam project, the relocation of “Minangkabau” people was taken place without “their free and informed consent.” In addition, in view of the flaws of the project, especially the low water level due to lack of basic geological research, they have “the right to return to their traditional lands”.

79. ILO, *Convention Concerning Indigenous and Tribal Peoples in Independent Countries* (Convention No. 169), 24 June 1989.

In addition to the above-mentioned “hard laws”, there are a number of principles which belong to a category of “soft laws”. They are embodied in the “Universal Declaration of Human Rights”⁸⁰, the “Declaration on the Human Environment”⁸¹, the “Rio Declaration on Environment and Development”, the “Agenda 21: Plan of Action for the 21st century”⁸² and so on. A variety of principles embodied in those declarations and action plans such as “sustainable development” and “land for land” approaches are an important component of “soft laws”.

In this context, particularly interesting are guidelines, operations policies and operational directives of the World Bank. Since 1980s, the World Bank has made up these policy guidelines, including the Operational Directive 4.20 concerning “Indigenous Peoples”, the Operational Directive 4.30 concerning “Involuntary Resettlement” and the Operational Directive 4.00 concerning “Environmental assessment”. When these guidelines are considered to be violated by the World Bank, the people who are adversely affected by a Bank-financed project can have access to an “ Inspection Panel”.

Similar policy guidelines have been formulated by other MDBs(Multilateral Development Banks) including the ADB(Asian Development Bank) and the IDB(Inter-American Development Bank). These MDBs also institute their own inspection panels.

Unfortunately, OECF(JBIC) has not made up guidelines concerning “indigenous peoples” and “involuntary resettlement” except its “Environmental Guideline ”. As to the relocation issues, only one paragraph was inserted in the “OECF Environmental Guidelines”, in which it said that “living conditions of the relocated people and so on must be examined and if necessary, appropriate measures must be taken.” It implies that oustees should at least regain their previous standards of living.

However, in practice, OECF(JBIC) has relaxed this requirement. In the Koto Panjang Dam project, OECF did not pay attention to the “living conditions “ of ”Minangkabau” people who were “manuia sungai”(river people). It also did not take into account the “tanah ulayat” system which was the living basis of ”Minangkabau” people. Therefore, OECF did not observe its policy on the recovery of previous “living conditions of the relocated people “.

In addition, in the process of the Court proceedings, JBIC has made bad use of its idleness. JBIC insists that the MDBs guidelines concerning the “indigenous peoples” and the “involuntary resettlement” are irrelevant to Japanese ODA. It implies that JBIC does not accept the basic principles embodied in the MDBs guidelines such as special measures for indigenous peoples, prohibition of the forced relocation and “land for land” approach.

80. This was adopted in the General Assembly of the United Nations on 10 December 1948.

81. This was adopted in the United Nations Conference on the Human Environment which was held at Stockholm on 5~16 June 1972.

82. The “Rio Declaration on Environment and Development” and the “Agenda 21: Plan of Action for the 21st Century” were adopted at the above-mentioned “Earth Summit” in 1992.

In the course of the Court discussions, JBIC insists that its "Environmental Guidelines" are applied only at the "appraisal" stage of the projects and that since they are only operational guidelines for "internal appraisal" works, JBIC staff bears no legal duties by them.⁸³ This is a strange excuse. Its real aim is to justify lack of human/environmental considerations in the decision-making process of its financing and monitoring process in the Koto Panjang Dam project.

This explanation is quite against the international understanding of the "environmental guidelines." For instance, as to its operational directive for "Environmental Assessment", the World Bank says that "this directive provides guidance to staff on the Bank's policies and procedures for conducting environmental assessments (EAs) of proposed projects."⁸⁴ However, according to JBIC, its "Environmental Guidelines" are not "guidance to staff".

JBIC established an inspection panel in April 2002 under its new "Social/Environmental Guidelines". Thereby the door was open to outside claimants including the people affected by a JBIC-financed project insisting that social and environmental damages might be brought by the implementation of the project. If the guidelines are only "internal appraisal" criteria, why outside people can have access to the panel ?

6. Failure of the "Action Plan"

In response to the Court access by the villagers, the Japanese Government put pressure upon the Indonesian Government to take measures for solving the remaining problems in the resettlement villages. As a result, an "Action Plan" was made up by the Indonesian Government with financial and technical assistance of the Japanese Government.

Replanting rubber trees is a main target of the "Action Plan". However, the actual practices failed to achieve this purpose. Most of rubber plantations remain unplanted. Planted rubber trees are badly managed so that many plants die. Thus, huge money has been wasted without fruitful results.

Most of the rubber plantations are located at the distant places from their residential sites of villagers. For example, most of people in Batu Bersurat village are allocated the rubber plantations at the places 20~30 kilometers apart from their residence. In addition, in order to reach there, they must cross the reservoir by "sampan"(small boats).

Even if villagers go to their rubber plantations for taking care of young trees, they can not get immediate income from their activities. For tapping from rubber trees, they must wait a long period of 7~8 years..

In the meantime, they must seek for other alternative income sources to sustain their families. Most of villagers are obliged to engage in the daily job opportunities such as plantation laborers,

83. Preparatory Pleadings of JBIC, 3 July 2003, p.36.

84. World Bank, *Operational Directive 4.01: Environmental assessment*, Manual Transmittal Memorandum, 3 October 1991.

stone collectors, illegal loggers.

For that reason, they can not go to their rubber plantations for taking care of young trees. If they go to their rubber plantations, their families will face to the serious starvation problems. Therefore, most of the rubber trees are badly managed and are affected by wild pigs, deer and white ants(anai-anai).

Other projects under the “Action Plan” are also not successful. For instance, a “sapi”(cow) distribution project has already been executed under the “Action Plan”. But, this project is not necessarily beneficial for the poor people because of an unfair distribution system of cows.

In some villages, corruption problems of village leaders concerning the distribution of cows under the “Action Plan” were the target of the police investigation. However, this problem remains unsolved. Therefore, among villagers, especially among the poor people, there are strong complaints about the unfair distribution of cows.

Certainly, cow breeding is one of income generation opportunities for villagers. However, a number of village leaders monopolized the distribution of cows and sold out them. Under such a situation, the project does not contribute to the improvement of the living conditions of the poor. Therefore, the existing distribution system of cows must be rectified so that the target people are the poor.

“keramba”⁸⁵ projects are also under the same fate. For instance, in Tanjung Pauh village, all “keramba” projects under the “Action Plan” met with failure. Responding to the appeal of villagers, the police investigated the problem. But, the real reasons of the failure were not made clear. Therefore, among villagers there remain strong complaints about the corruption of community leaders.

It is very interesting that most of successful “keramba” projects are not undertaken under the “Action Plan” but are carried out under the private initiatives of villagers. Most of “keramba” projects in Tanjung Alai, Pongkai Istiqomah and Muara Takus villages come under this category.

In Tanjung Alai, some villagers have already carried out “keramba” projects under the Gulamo bridge. These projects are very successful because of enough water level and good water quality. With some additional inputs of investment, it will be possible for villagers to extend this undertaking.

The biggest reason of the failure of projects under the “Action Plan” is “KKN”(Korupsi, Kolusi, Nepotisme)⁸⁶ Most of village leaders are more concerned in manipulating projects and skimming off a cut for themselves than in assisting the poor and weak. As long as “KKN” is rampant among village leaders, any government supported project will not contribute to the rehabilitation of the poor and weak.

85. This is a type of aquaculture on the reservoir. Fish are bred in the floating pond vessels which are made from nets, timbers, bamboos and drums.

86. corruption, collusion and nepotism.

7. Dark Prospect of the Rehabilitation of PAFs

The Indonesian Government and the Japanese Government have made propaganda for “kolam ikan” (fish ponds) in Pulau Gadang and Koto Masjid villages as a success story of the rehabilitation efforts of PAFs.⁸⁷ It is true that in both villages, many people engage in “patin” fish breeding. However, nowadays, many villagers face serious debt problems, because in June 2005 more than 50 fish ponds were affected by prevalence of fish diseases. Most of them could not repay their borrowing money from Banks and “tauke” (middlemen). Some villagers were obliged to sell their 2 ha rubber plantations and/or 0.4 ha “palawija” in order to repay their debts.

Another success story is “ayam” (chicken) breeding in Mayang Pomgkai village. In this village, some villagers have already initiated chicken breeding projects, especially broiler chicken projects. However, this type of project needs considerable amount of initial costs. In addition, there are some environmental problems including bad smelling and “lalat” (fly) problems. If capital and environmental problems can be overcome, this kind of projects will be a good chance for supplementing income for villagers.

At present, in some villages, people have produced some kinds of vegetables, including “jagung” (corn), “tebu” (sugarcane), “terong” (eggplant), “pakis” (edible fern), “daun ubi” (sweet potato) and “bangkuang” (juicy tuber). In addition, some villagers have engaged in producing some sorts of fruits such as “pisang” (banana), “jeruk” (orange), “mangga” (mango), durian and papaya. However, most products are for domestic consumption or for “pasar lokal” (local markets).

Generally speaking, the soil and temperature conditions in the resettlement villages are not favorable to the production of crops, vegetables and fruits. In particular, in lands under the state of laterite which are deprived of vegetation it is impossible to do the sustainable agriculture.

8. Necessity of Real Cost/Benefit Analysis

The main justification of the Koto Panjang Dam project in its planning and financing stages was that there was “rapidly increasing electricity demand” in Sumatra, especially in Riau Province. However, according to F/S, at that time, population density in Riau was only 23.7 persons per square kilometer. Therefore, questions were raised to the Japanese Government: Why needed so big hydroelectricity of 114 MW in sparsely dense areas and who were the main beneficiaries of the project? In querying the beneficiaries of the project, SKEPHI said that “to light up the homes of 3 million people, one does not need 114 MW of electricity.”⁸⁸ However, the Japanese Government did not answer to these questions.

As we have seen already, the Bupati of Kampar district at that time, Saleh Djasid, justified the construction of the Koto Panjang Dam by saying that it was the “locomotive” of electricity-

87. This sort of optimistic view is reflected in the SAPS Team Report, op., cit. Appendix 2.1 (*PRA meeting Record*), p.A2-130.

88. SKEPHI, op. cit., p.12.

intensive industries. He had in mind the interests of major corporate conglomerates such as Salim, Sinar Mas and Astra groups who closely linked to the Suharto family. They planned to develop the processing industries of timber, oil palm, rubber and so on in Sumatra Island. Therefore, the project clearly intended to meet the needs of these industries.

However, nowadays, both the Indonesian Government and the Japanese Government can not invoke needs of electricity-intensive industries as a *raison d'être* of the Koto Panjang Dam. Instead, they talk about the electricity needs of the general public.

In the course of the Court discussions, the defendants insist that the Koto Panjang Dam project contributes to the urban and rural electrification of the central part of Sumatra Island. Is the project justifiable with these reasons? In particular, is it possible to defend the project with the assertion that the benefit of hydroelectricity outweighs the human and environmental costs?

The appropriateness and reasonableness of this assertion must be verified in the following points. A first question relates to total costs of hydroelectricity. It was only the construction cost of the dam/power station, substations and transmission lines that was shown in F/S. There was not included hidden cost such as the relocation cost of PAFs and environmental costs. And also the opportunity cost of the “non-action” alternative was not taken into consideration.

In comparison with hydroelectricity, natural gas is cheaper and environmentally benign. In addition, since the project site is located at the equatorial area, solar energy is more appropriate to the local conditions. However, these alternatives were never taken into account at the planning stage of the project. Therefore, only talking about electrification needs without comparison with other energy alternatives is not a reasonable approach.

Second question relates to the beneficiaries of the project. Although the main beneficiaries are consumers of urban areas, in particular in Pekanbaru, they suffer incessant rise of electricity cost and frequent blackouts of electricity. Main reason of blackouts is due to the low water level of the reservoir. Another cause of blackouts is due to the frequent outages of the power station, substations and transmission lines. As to operation troubles, the SAPS Team says as follows;

“Since commencing operations, the power station has experienced three major outages. Two planned outages of Unit 2 and 3 occurred in 1998. These outages resulted from necessity of replacement of inferior grade nuts of the units. A forced outage, occurred in 2001 due to the malfunction of a circuit board of the governor controller of Unit 1. Since the malfunctioning occurred during the warranty period, it was rectified within the original budget. Except for these outages, each unit has not experienced a major outage so far.”⁸⁹

Here is mentioned only to “major” outages of the power station. However, in view of the frequent blackouts, there seems to be so many “minor” outages. In addition, there is no mention about troubles of substations and transmission lines in the Report.

With regard to the rural electrification, it must be pointed out that the extension of distribution

89. SAPS Team Report, op., cit. p.3-4.

lines was not included in the project scope. In order to send electricity to the remote and isolated areas, it is imperative to construct networks of transmission lines connecting to towns and villages. However, in the implementation process of the Koto Panjang Dam project, such networks were not constructed. Therefore, many towns and villages can not enjoy the benefit of the project.

It is true that electricity is supplied to the resettlement villages. However, as to this electricity supply, there are strong complains among villagers.

First, according to villagers, the government's promise before the relocation was that the electricity installation/connection costs and monthly electricity fee during one year were without charge. However, it was only two villages that received electricity installation/connection free of charge. People in other villages had to pay for electricity installation/connection. Therefore, the villagers raise now a question: Why is there unequal treatment between two villages that received electricity free of charge and the rest of the resettlement villages that paid for installation/connection ?

In addition, villagers had to pay monthly electricity fee from the first year of its installation. Therefore, nowadays, many villagers insist that the electricity installation costs/fees should be paid back.

Second, even at the present time, there are so many people who can not enjoy electricity in the resettlement villages. They can not afford to pay electricity installation charge and monthly fee due to lack of income. According to the SAPS Team Report, in the Muara Takus village, "to date about 60 % of the community do not have electricity, as they can not afford to pay the installation fee."⁹⁰ In the case of Koto Tuo village, it is reported that "to date, about 50 % of the households are without electricity", namely "150 households have not yet installed electricity in their homes."⁹¹

The electric situations in other villages are almost the same. As to Batu Bersurat village, the SAPS Team Report says as follows;

"The present problems in the community related to the electricity is that some do not yet get electricity power because they do not have sufficient money to cover the installment cost. In addition, the billing cost hiking up suddenly and very expensive is felt high burden by the community. Moreover, the present condition to earn income is unpredictable. Therefore, many people do not pay the electricity bill for the last 2 or 3 months."⁹²

Third complaint of villagers is the frequent going off of the electricity. On the problems related to the electricity in Gunung Bungsu village, the SAPS Team reports as follows;

"In the beginning, the electric was to be free of charge. However, in its implementation community should pay around Rp.350.000 for installation. The electric condition is often

90. *ibid.*, p.A2-97.

91. *ibid.*, p.A2-106.

92. *ibid.*, p.A3-33.

extinguished and disturbs the lights. As indicated by community, the electric power is inappropriate as the plan. There is only one of the three electric turbines is run. Therefore, the electric power is not as hoped.”⁹³

It is a well known fact that only one of the three electric turbines is run. Under such a situation, it is impossible to generate electricity of 114 MW. At present, a doubt has been cast on the data and statistics of PLN concerning electricity generation of the power station of the Koto Panjang Dam.

Therefore, it is necessary to be carried out the real cost/benefit analysis of the Koto Panjang Dam project by an independent and neutral team of experts. The team should make a comparative study of energy generation benefits and the human and environmental costs of the project.

The study team should examine among others the acceptableness and allowableness of the present situations, namely the small energy generation benefits and the big rehabilitation costs of PAFs. In addition, the team should make a forecast about the future financial and technical needs for the rehabilitation of PAFs. In this context, the possibility of the sustainable agriculture in the resettlement villages should be also examined.

If the result of the review will be the negative conclusion in terms of the cost/benefit analysis and the sustainable agriculture, the removal of the Koto Panjang Dam should be examined from the long-term perspective. In the scenario of the decommissioning of the Dam, the rehabilitation costs of PAFs might be only for the reconstruction of their houses and transportation of their properties, because lands in the old villages are fertile, and they will be able to be rehabilitated by themselves on the basis of “berdikari” (self-reliance efforts).

9. Conclusion

The Koto Panjang Dam project is a legacy of the Suharto authoritative regime. The greatest motivation of the project was to meet demand by electricity-intensive industries. At the same time, this dam had a political meaning as a first big dam in Riau Province which wanted to demonstrate its dam construction ability. As to the “catching-up-with-Java” mentality at that time, Dr. George J. Aditjondro described as follows;

“With Suharto’s frequent visits to Asahan and his praises for Indonesian engineers involved in that project, large dams and reservoirs became symbols of each province’s prestige. In this process, dams and reservoirs in Java became *the* barometers of progress for provinces in Outside Java.”⁹⁴

Under such a political background, economic and engineering imperatives drove the dam con-

93. *ibid.*, p.A3-104.

94. George J. Aditjondro, *How the Media Covered (Up) State Controlled Dams in Sumatera, Indonesia, Prior to Kotopanjang*, 1991, p.5.

struction to the exclusion of human and environmental concerns. At most the resettlement and rehabilitation of PAFs, the protection of natural environment, and the preservation of historical/cultural heritage were of only secondary importance.

The result was catastrophic not only in terms of electricity generation but also in terms of human and environmental impacts. There can be found all problems of “disease of gigantism” in this project. A typical example is the low water level of the reservoir due to lack of hydrological and geological knowledge.

In the resettlement villages, very few people recovered from the ordeal, either economically or psychologically. Among others, poor people are obliged to live in the original houses with 6 × 6 meters. Today, more than ten years since the resettlement, board walls of houses have been decayed and roofs have been destroyed. So that many poor people have been exposed to the intrusion of rainwater into houses. In addition, villagers in some villages are obliged to live in houses of asbestos plates roof.

Students in villages of Riau Province must spend in school buildings of asbestos roofing. Villagers must go to the village head offices of asbestos roofs. And, they must hold “mushawarah” meetings at “musholla” of asbestos roofing.

In most of the resettlement villages, people can not have access to clean and safe water. Ironically, poor people can not enjoy benefits of electricity even at the present time. In Balung village, all people are excluded from enjoying hydroelectricity of the Koto Panjang Dam.

The biggest problem in the resettlement villages is lack of income generation opportunities. At present, many people face to difficulties to eat and to send their children to schools. In order to sustain their daily needs, a number of people sold already out 2 ha rubber plantations and/or 0.4 crop yards (palawija).

In the Annual Report of BAPPENAS in 2003, it is pointed out that there remain so many unsolved problems relating to the resettlement of the Koto Panjang Dam project, including unpaid compensation, failure of rubber planting and poor equipment of clean and safe water systems. As a result, it says, what was “lost” is the trustworthiness of PAFs to the Government.⁹⁵

At the same time, by the resettlement, many kinds of the traditional economic and social systems of “Minangkabau” community were lost. In particular, loss of the “tanah ulayat” system means a big transformation of their living basis.

They also lost rivers as another living basis. They are now not “manusia sungai” (river people). For that reason, many traditions and cultures related to rivers were lost including “Balimau”, “turun mandi”, “Pacu Sampan”.

In the resettlement villages, there are little “sawah” (paddy fields). For that reason, the traditional ceremony of “mintak-mintak” is not held any more.

Other “Minangkabau” cultural performances, including traditional music and dancing, were

95. BAPPENAS, *Laporan Pelaksanaan 2003*, p.4.

also lost. A typical example is the “Pancak Silat”. At present, there are few people who can play “Pancak Silat”. Although this must be conserved as a cultural heritage, no support measure is provided by the Government.

The traditional event which is held even in the resettlement villages is “Panjat Pinang” which is the race of climbing the “pinang” tree. However, participants in this event are less than in the past because most of people must go outside villages for getting their daily earnings.

The traditional event of “Hari Raya Korban” is also held in the resettlement villages. However, it is very difficult to get “kerbau”.

Under these living conditions, the life style of people in the resettlement villages is quite different from it in their old villages. In the resettlement villages, most of villagers can not be rehabilitated not only in the economic context but also in the social and cultural context.

Both the Indonesian Government and the Japanese Government share responsibility for these problems. In this context, the responsibility of the Japanese consultant TEPSCO, which sold the project to the Indonesian Government and engaged in F/S of the project and subsequently played a role of the “project management”, is significant. The formulation of the F/S report was financed by JICA.

OECD failed to pay “due care” to basic human rights of PAFs as well as the precious natural ecosystem and historical/cultural heritage of the region. Therefore, JBIC should take a lender’s liability in terms of carelessness which caused the aforementioned “ethnocidal” and environmentally destructive situations.

In the course of the Court proceedings, the defendants claim that they are merely a consultant or a financier. However, this argument is not persuasive. In the planning stage of the project, TEPSCO could propose the “non-action” alternative to avoid the relocation problems of “manusia sungai” and could suggest other environmentally benign energy alternatives. Although OECD and the Japanese Government were acquainted with the fact that “free and informed consent” of PAFs was not obtained, they made a decision to finance the project. In addition, although OECD made protests to the BAPPENAS about the impoundment of the reservoir, after all it accepted the submergence measure. The Japanese Government also condoned the impoundment of the reservoir in knowing the poor arrangements in the resettlement villages.

Throughout the planning and implementation process of the project, the defendants did not pay “due care” not only to the traditional economic/social systems and culture of “Minangkabau” community but also to a unique tropical forest with a tremendous biological diversity and historical/cultural heritage of importance in the region. The failure of “due care” constitutes non-compliance with internal/international legal norms, including “hard laws” and “soft laws”. Among others lack of humanitarian and environmental considerations is incompatible not only with ODA Charter and OECD guidelines but also with B Covenant.

It is also against the customary international laws concerning the principle of prohibition of the forced relocation and the principle of the relocated people’s consent which are enshrined in ILO

Convention No. 169 and guidelines of MDBs. In this respect, JBIC insists on the non-existence of guidelines concerning the “indigenous peoples” and the “involuntary resettlement” in Japan. However, JBIC can not make bad use of its idleness in order to avoid its lender’s liability.

It must be added that the careless submergence of the unique tropical forest and historical/cultural heritage of importance was clearly in contravention of the “Convention on Biological Diversity” and the “Convention Concerning the Protection of the World Cultural and Natural Heritage”. Moreover, Japan’s condonation of the use of asbestos in the resettlement villages was against the basic spirit and purpose of the ILO Convention on Asbestos.

In that sense, the complicity of defendants is doubtless. Therefore, defendants are liable for the present ordeal of PAFs. Its natural conclusion is that they are under the obligation to pay compensation for sufferings of PAFs.

However, only with monetary compensation, PAFs can not be rehabilitated. Under the poor soil conditions in the resettlement villages, there is little possibility in operating the sustainable agriculture. In other words, people are difficult to rehabilitate in the existing resettlement villages. A typical example is Pongkai Baru village. As to this village, SAPS Team reports as follows;

“Most allocation house (timber wall, cement floor and asbestos roof) is damaged and not cared since his owner leaves it. There are only 90 of the 200 houses that are occupied. About 30 houses are flooded when the rain comes.”⁹⁶

One of reasons in vacancy of houses is that owners sold out their houses/lands and moved to other places. Another reason is that owners and their families go to other places for working as “merantau.”⁹⁷

Under these situations, there is no way but take a gloomy prospect. Therefore, from the long-term perspective, the decommissioning of the Dam might be only a way to solve problems. If this policy choice will be made by the Indonesian Government, in that occasion the Japanese Government should bear decommissioning costs of the dam and the returning costs of PAFs to the old villages. In addition, the Japanese Government should accept the cancellation of payment of loans related to the Koto Panjang Dam project.

96. SAPS Team Report, op., cit. p.A3-53.

97. “Minangkabau” people have a custom to leave their home areas to make their ways in life. Their ideal life style is that they go to Java, Malaysia and so on for working in their youth and return to their “kampung”(home village). Most of returnee donate a part of earnings to their “kampung” for the benefit of its welfare. However, PAFs of the Koto Panjang Dam project lost their “kampung” permanently. In addition, people in the resettlement villages leave home exclusively for their personal earnings. In this sense, for PAFs, the meaning of “merantau” is not the same with it in the old villages.