
Executive Summary

The Housing and Land Rights Network of Habitat International Coalition dispatched a fact-finding team to the Narmada Valley, 18–24 September 2002, to investigate the resettlement and rehabilitation issues arising from the Sardar Sarovar and Man dam projects. The combined effects of the monsoons and the damming of the rivers destroying households and crops provided the impetus for the fact-finding mission. The fact-finding team visited affected villages and rehabilitation sites, and met with officials of the Grievance Redress Authority (GRA) and the Narmada Valley Development Authority (NVDA), in Madhya Pradesh and Gujarat, and the Narmada Bachao Andolan activists. The rehabilitation provisions of the Narmada Water Dispute Tribunal Award, the resettlement and rehabilitation policies of the state governments and the redress mechanisms largely seek to protect the housing and land rights of the people affected by the Sardar Sarovar and Man projects. However, the fact-finding team found that, at the ground level, the safeguards are being flouted in a large number of cases, and redress mechanisms have been sidelined.

Observations and Findings

Sardar Sarovar Project

1. Submergence due to the 2002 monsoons and raising the dam's height in May 2002 have destroyed the crops and homes of Sardar Sarovar Project (SSP) affected villages in Maharashtra and Madhya Pradesh, rendering some of the villagers homeless. The people face a severe food and drinking-water shortage.

2. The rehabilitation sites that the team visited are not fit for habitation. At Gehalgoan and Gopalpura rehabilitation sites, Dhar District (Madhya Pradesh), there are some rocky, uneven plots for housing, and villagers explained that they had rejected the resettlement sites as unsuitable, in part because there was no provision for agricultural land or alternative livelihood. These unprepared resettlement sites are designated for persons affected at the current dam height of 95m.
3. The residents of Chikhalda, also in Dhar District, affected at the dam height of 95m, have not been resettled at all. The rehabilitation site chosen for Chikhalda was itself subject to being submerged. The Action Taken Report of Madhya Pradesh government shows them erroneously as resettled.
4. The state governments are issuing *ex-parte* house and agricultural land allotments to “nonresponsive” project-affected families; i.e., families not accepting any rehabilitation offer of the state. The government sends a notice to the oustees informing them of the allotment of a house or land to them, often in another state. Once this notice is sent, the people are counted as rehabilitated on government records, even while living in their original villages.
5. The chairman of Madhya Pradesh Grievance Redressal Authority (GRA) has admitted that he has no infrastructure to verify claims of the Narmada Valley Development Authority. This has serious implications for the functioning of the GRA. The affected people told the HLRN-HIC fact finders that the NVDA official against whom they had complained for falsely including families in the rehabilitated list was himself sent to investigate the matter. The independence of the GRA becomes even more crucial since the Supreme Court has expressed the view the GRA’s function obviates the need for the Court to interfere.
6. The affected people in Alirajpur Tehsil, Jhabua District in Madhya Pradesh, who are predominantly tribal, told the fact-finding team that, though they have been cultivating the land for generations, their names do not figure in land records and now their lands are going to be submerged with entitlement to any compensation. To protect their land and housing rights, land settlements need to be updated, so that they are given titles to the lands that they hold.
7. There is evidence of the Madhya Pradesh government misapplying the Narmada Water Dispute Tribunal (NWDT) Award, as the government is unable to rehabilitate affected persons according to the Award’s provisions. Thus, in deciding how many affected families needed to be rehabilitated at the dam height of 95m, it has invented a distinction between temporary and permanent submergence in order to escape rehabilitating victims of the latter.
8. The NWDT Award requires resettlement to take place at least one year before the threat of submergence and further requires that rehabilitation be complete six months before raising the height of the dam. The states have repeatedly violated these safeguards. Although the Supreme Court has directed that raising of the height will be only *pari passu* with the implementation of the relief and rehabilitation that is requiring full

rehabilitation for each stage before continuing to raise the height, in practice this requirement is being violated.

Man Irrigation Project

1. On 20 July 2002, police forcibly evicted the residents of Khedi Balwadi, the first village to be submerged. The villagers testified that the police violently dragged them into trucks and forcibly removed them to two locations 45–70 km away. When the police removed the villagers from their homes, approximately 25 children were separated from their parents and abandoned in the village.
2. Due to the heavy rains following the closing of the dam's sluice gates on 9 August 2002, the homes and crops in several villages were completely inundated by the new reservoir, and the people have been forced to live in squalid conditions in tin sheds. Effectively rendered homeless, they are also suffering a severe food shortage.
3. The project-displaced tribals were not given access to full information about entitlements under the Madhya Pradesh Rehabilitation and Resettlement Policy. The villagers stated that, ten years ago, they were forced to accept cash compensation for partial loss of cropland, and they were told that their homes would not be affected by the dam.

Based on the foregoing observations and findings of the fact-finding team, HLRN-HIC makes recommendations for better protection of the rights of the people affected by both the Sardar Sarovar Projects and the Man dam.¹ □

HLRN-HIC submitted these findings and recommendations to the Prime Minister of India on 22 November 2002. The fact-finders also forwarded copies of the transmittal letter to the chief ministers of Madhya Pradesh, Gujarat and Maharashtra and the chairman of the Rehabilitation and Resettlement (R&R) Sub-Group of the Narmada Control Authority, among others.² HLRN-HIC received a reply only from the Chairman of the R&R Sub-Group, who met one of the members of the fact-finding team on 11 December 2002. At that meeting, the chairman did not address any of the issues covered in the mission report, but promised to raise the concerns it contained with the three state governments and the R&R Sub-Group and report back to HLRN-HIC. On 3 February 2003, HLRN-HIC issued a letter, requesting the chairman to provide the results of his consultations as promised. Despite repeated phone calls and letters³ since, HLRN-HIC has not received a response to date, nor has it received any acknowledgment from the other authorities with whom HLRN-HIC has shared its concerns.

¹ For detailed recommendations, see Chapter IV.

² See Annex 5 for details.

³ See Annex 6 for a copy of the letter sent to the chairman of the R&R Sub-Group.



Introduction

During the monsoons in August and September 2002, some of the tribal villages affected by the Sardar Sarovar and Man dams were submerged by the rising waters, and crops and homes were destroyed. The Sardar Sarovar and Man dams are a part of the Narmada Valley Development Project, which entails the construction of 30 big dams and more than 3,000 medium and small dams on the river Narmada and its tributaries. The Sardar Sarovar Project (SSP) is being constructed on the Narmada River in Gujarat. Another big dam under construction is the Man Irrigation Project on a tributary of the Narmada in Madhya Pradesh. Before the monsoons, members of civil society who had visited these areas had warned that people threatened with submergence by the Sardar Sarovar and Man projects had not been rehabilitated as yet.

The Housing and Land Rights Network of Habitat International Coalition dispatched a fact-finding team to the Narmada Valley to investigate effects of the 2002 monsoon and to assess the current status of the rehabilitation of the people affected by the Narmada Valley projects. Habitat International Coalition (HIC)⁴ is an international, movement of organisations and individuals working in the area of human settlement. Its Housing and Land Rights Network (HLRN) endeavours to promote, protect and monitor housing and land rights around the world. HIC has conducted fact-finding missions on widely varying housing rights situations, such as those found in Kenya; demolitions in Palestine; the earthquake victims in Kobe, Japan and land rights of Bhutanese refugees.

⁴ For more information on HIC, please see <http://www.hic-mena.org>

The aim of the fact-finding mission was to ascertain whether the rehabilitation of the affected people complied with:

1. the Narmada Water Disputes Tribunal Award (NWDT Award)⁵;
2. the directions of the Supreme Court of India in October 2001, in the Sardar Sarovar Project case⁶;
3. the rehabilitation and resettlement policies of the states of Gujarat, Madhya Pradesh and Maharashtra;
4. the Involuntary Resettlement and Indigenous Peoples policies of the World Bank applicable to the Sardar Sarovar Project and
5. India's obligation to protect housing rights under international human rights law.

Ms Shivani Bhardwaj, associate coordinator of the South Asia Regional Programme of HLRN-HIC, and Ms Dana Clark, an international human rights and environmental lawyer, made up the fact-finding team. Following a review of the relevant legal, technical and narrative documents arising from the dam projects, the fact-finding team (FFT) travelled through Gujarat, Maharashtra and Madhya Pradesh from 17 to 24 September 2002 to gain a first-hand understanding of the post-monsoon situation in the valley.⁷ The FFT visited some of the villages worst affected during the monsoons in Maharashtra and Madhya Pradesh, as well as rehabilitation sites in Gujarat and Madhya Pradesh. The FFT also met with villagers displaced by the Man dam in Madhya Pradesh. During these visits, the team not only interviewed and met the residents of these villages, but also residents of nearby villages who wanted to share their problems. The team also met with Mr T.P.S. Pillay, Secretary to the Grievance Redress Authority for Madhya Pradesh; Mr J.P. Vyas, Narmada Valley Development Authority, in Bhopal and interviewed Justice Majumdar, of the Grievance Redress Authority, Gujarat, and with Mr Ahmed Afroz, of Narmada Control Authority (NCA) by telephone. The team also held meetings with representatives of the Narmada Bachao Andolan, the movement of the project-affected persons in the Narmada Valley.

Framework for the Human Right to Adequate Housing under International Human Rights Law

*"The human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity."*⁸

Regardless of the project specific procedures and policies, the Government of India has an overarching responsibility to respect the right to housing. India has ratified a number of international human right treaties, which require it to protect the right to housing of the people.⁹ The main instrument that protects the right



Homes were rendered unsafe by shifting mud left behind after the floodwater that partially submerged Domkhedhi village, Maharashtra, had receded.

Photo by Dana Clark

⁵ The NWDT Award included, among other things, guidelines on the entitlements of the oustees. For a detailed explanation of the Award see para 2 of Chapter II.

⁶ Narmada Bachao Andolan v. Union of India and others; writ petition (c) no. 319 of 1994. For directions of the Supreme Court, see Annex 1.

⁷ See Annex 2 for the itinerary of the team and the government officials they consulted.

⁸ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari, submitted pursuant to Commission resolution 2000/9. E/CN.4/2001/51, 25 January 2001, para 8.

⁹ International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women. See Annex 3 for provisions of these treaties that protect the right to housing.

to adequate housing is the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11(1) of the ICESCR states, *“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right....”*

The right to housing is not limited to only shelter, that is, a roof over one’s head. The right to adequate housing encompasses the right to security of tenure; essential services such as water, sanitation; affordability; access to means of livelihood; protection from forced evictions; community identity; non-discrimination; protection from arbitrariness¹⁰; etc. *“Adequate shelter means... adequate privacy, adequate space, adequate security, adequate lighting, adequate ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities...all at reasonable cost”*¹¹. The right to housing cannot be seen in isolation but in the context of the indivisibility and interdependence of rights. That is, the right to housing is intrinsically linked to other human rights that are affected when the right to housing is affected including the right to health, the right to food, the right to education, the right to participation, the right to livelihood, the right to non-discrimination, the right to protest and peaceful assembly, etc.

“Forced eviction” of people from their lands and homes is considered a gross violation of human rights, particularly the right to housing¹². Forced evictions have been defined as *“the permanent or temporary removal against their will of individuals, families and or communities from the homes and/or land which they occupy without the provision of, and access to, appropriate forms of legal or other protection”*¹³. The UN Committee on Economic, Social and Cultural Rights has said that evictions should not result in rendering people homeless or vulnerable to violations of other human rights¹⁴. Under international human rights law, safeguards have been laid down to protect against human rights violations if evictions are absolutely necessary. The affected people must be provided suitable alternatives after proper consultation; they must be informed about what the land (they are being removed from) is being used for and about the date of eviction, well in advance. The UN Comprehensive Guidelines on Displacement based on Development, 1997, lays down that States should explore all possible alternatives to any act involving forced evictions. This means that affected persons – women, children and indigenous peoples – have a right to all relevant information and the right to full participation and consultation throughout the entire process¹⁵. In case of any resettlement, the States should ensure that *“no affected persons, groups, communities shall suffer detriment as far as their human rights are concerned nor shall their right to the continuous improvement of living conditions be subject to infringement.”* Also, the affected community should provide full and informed consent as regards the relocation sites. The State shall provide all necessary amenities and services and economic opportunities¹⁶.

Convention 107 of the International Labor Organisation safeguards the rights of tribal communities and was ratified by India in 1958. The Convention requires governments to ensure social, economic and cultural development and to raise the standard of living of the tribal population¹⁷. According to Article 12(1) and

¹⁰General Comment 4 and 7 of Committee on Economic, Social and Cultural Rights. See annex 3 for full text.

¹¹UN Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000, A/43/8/Add.1/para. 5.

¹²UN Commission on Human Rights, Resolution 93/77 on Forced Evictions.

¹³General Comment 7; para 3 and 7; UN Committee on Economic, Social and Cultural Rights.

¹⁴Ibid

¹⁵Article 16, UN Comprehensive Guidelines on Displacement based on Development, E/CN.4/Sub.2/1977/7

¹⁶Article 28.d and e, Ibid

¹⁷Article 2(2)(b) of ILO 107.

(2), governments should not remove tribal populations without their free consent from their habitual territories except in the interest of national economic development. When removal is deemed necessary, they should be provided with lands of quality at least equal to that of lands previously occupied by them, suitable to provide for their present needs.

The thrust of the right to adequate housing under international human rights law is that the State should ensure that evictions, especially of tribal populations, take place only in exceptional circumstances with guarantees of appropriate rehabilitation. The affected population should be given sufficient information and consulted about the rehabilitation. The rehabilitation provided by the government must include all aspects of adequate housing, that is, legal security of tenure; livelihood options; basic facilities like drinking water; drainage; health; education; and be habitable, accessible and affordable. Where communities' livelihood options are dependent on agriculture or grazing, the right to adequate housing would have no relevance if suitable agricultural and grazing land is not provided close to the dwelling place.

Involuntary Resettlement Policies of the World Bank

The World Bank policies that were in force at the time that the loan was approved for the Sardar Sarovar Project in 1985 continue to apply to this project, and will continue to apply until the loan is repaid¹⁸. Of the World Bank policies, the policy on involuntary resettlement and tribal people are most relevant. The Involuntary Resettlement Policy (OMS 2.33, Issued February 1980) says that "the major objective is to ensure that settlers are afforded opportunities to become established and economically self-sustaining in the shortest possible period, at living standards that at least match those before resettlement." It also says that the Bank will "avoid or minimize" involuntary resettlement whenever feasible.

The Tribal Peoples Policy (OMS 2.34, Issued 1982), states, "Whenever tribal peoples may be affected, the design of projects should include measures or components necessary to safeguard their interests and, whenever feasible, to enhance their well-being." It also states, "The Bank will assist projects *only* when satisfied that the Borrower or relevant government agency supports and can implement measures that will effectively safeguard the integrity and well-being of tribal peoples." □

¹⁸ The World Bank, Memorandum from Ibrahim F.I. Shihata to D. Joseph Wood (30 March 1993): "In the brief Board discussion today of the cancellation of the Bank's loan for the Narmada Project, the impression was left that the Government of India is no longer legally obligated towards the Bank to carry out its obligations under the loan agreement . . . this is not the case. Section 6.06 of the General Conditions applicable to all Bank loans . . . provides that '[n]otwithstanding any cancellation or suspension, all the provisions of the Loan Agreement and the Guarantee Agreement shall continue in full force and effect except as specifically provided in this Article."

II

Sardar Sarovar Project

Background

The Sardar Sarovar Project (SSP) is the biggest dam of the Narmada Valley Development Project. It is a multipurpose, interstate project involving the construction of a large dam (138.68 m high) in Gujarat. The project is being implemented by the governments of Gujarat, Maharashtra, Madhya Pradesh and Rajasthan, with the active participation of and assistance from the Union of India. If the project proceeds to its full design height, the damming of the river will form a reservoir approximately 214 kilometres long that will permanently inundate extensive areas in Gujarat, Madhya Pradesh and Maharashtra, including large forest areas, besides causing additional submergence, every monsoon, of agricultural and other lands adjacent to its banks.

In 1969, the Narmada Water Disputes Tribunal (NWDT) was set up to settle conflicting claims of the states over sharing of the Narmada river waters, the cost of rehabilitating the displaced people, the height of the dam, etc. The Tribunal gave its award in 1979 and laid down guidelines for the rehabilitation of the affected population. The project has been projected to affect 40,827 families from 193 villages in Madhya Pradesh; 33 villages in Maharashtra; and 19 villages in Gujarat¹⁹. All the affected villages in Maharashtra and Gujarat and about 53 of the villages in Madhya Pradesh are tribal villages. The primary beneficiary of the project is the state of Gujarat, but most of the displacement due to the reservoir will take place in Maharashtra and Madhya Pradesh. The NWDT Award only recognises the reservoir-affected as oustees. More than a thousand families in

¹⁹The Supreme Court quoted these figures in the judgment. The NCA website says that there are 40,882 project affected families. The NBA estimates that more than 44,000 families will be affected and with the findings of the Task Force in Maharashtra the numbers affected have gone up drastically.

Gujarat who are affected due to the canal network, establishment of Shoolpaneshwar wildlife sanctuary, a housing colony near the dam site and drainage works have not been considered oustees due to the limited nature of the NWDT award, though they are clearly suffering impacts and deserve rehabilitation.

In 1985, the World Bank provided a loan to the Government of India which kick-started construction of the dam. In 1992, the report of an independent review found that the World Bank and government of India had violated the provisions of the World Bank's Involuntary Resettlement, Tribal Peoples, and Environmental Assessment policies. Six months later, the Government of India announced that it wished to cancel the remaining balance on the loan. This decision, however, did not absolve the World Bank of its responsibility for ensuring that the project was in compliance with its policies and procedures. Nor did it absolve the state and central governments in India from following the normative framework for resettlement and rehabilitation that had been developed for the Sardar Sarovar project and subsequent dams on the Narmada.

In 1994, various issues relating to the SSP such as environmental clearance, rehabilitation of affected persons, the NWDT Award, canal and other affected people not being included as oustees were taken to the Supreme Court by the Narmada Bachao Andolan (NBA). The court stayed work on the project from 1995 till 1999. In 1999, it permitted construction of the main part of the dam from 80m to 85m.

On 18 October 2000, the Supreme Court cleared the way for continued construction of the dam as per the NWDT Award, *"ensuring compliance with conditions on which clearance of the project was given including completion of relief and rehabilitation work in...compliance with the scheme framed by the Government, thereby protecting the rights under Article 21 of the Constitution"*²⁰. Accepting the assurances given by the Relief and Rehabilitation Sub-Group, the Court directed that the dam height to be raised immediately to 90 m. For further increase in the height of the dam, the court directed that *"raising of the height will be only pari passu with the implementation of the relief and rehabilitation and on the clearance by the Relief and Rehabilitation Sub-Group. The Relief and Rehabilitation Sub-Group will give clearance of further construction after consulting the Grievances Redressal Authorities."* *Pari passu* literally means that construction and rehabilitation should make equal progress and should be related. The NWDT Award requires that people be resettled at least one year before the monsoon that threatens their submergence, and that they be fully rehabilitated at least six months prior to that date; otherwise, the dam height should not be increased.

Since this ruling by the Supreme Court in 2000, there have been numerous reports that have indicated that the rehabilitation of people affected at a dam height of 90 m has not been completed, so the height of the dam should not be raised further. Nonetheless, the dam height was raised again, to 95 metres, in May 2002.

The Maharashtra government set up the *"Committee to Assist the Resettlement and Rehabilitation of the Sardar Sarovar Project-Affected Persons"* under the chairmanship of Justice S.M. Daud (retired). In June 2001, after extensive field-level meetings with the affected people in Maharashtra, the report of the Committee found that a large number of families affected at 90m height had not been rehabilitated as per the provisions of the NWDT Award. The Committee recommended that no

²⁰See Annex I for directions of the majority order of the Supreme Court.

further construction (above 90 m) should be permitted till all families affected at 90 m had been surveyed and resettled. On the basis of the Committee's recommendations, a fresh village-wise household survey was carried out in Maharashtra between December 2001 and August 2002 by a Task Force set up by the government comprising of officials, affected people and activists to ascertain the actual number of affected families at 90 m, 93 m, 100 m and full dam height (138.68 m)²¹. The findings of the Task Force show a vast increase in the number of affected persons in need of rehabilitation. The number of project-affected families to be rehabilitated at 95 m in Maharashtra has increased to 1,295 from 17.

In a letter dated 10 August 2001, The United Nations Special Rapporteur on Adequate Housing, Mr. Miloon Kothari, urged the Prime Minister of India to place a moratorium on increasing the height of the dam based on his determination that the people affected by the dam had not been rehabilitated as per the NWDT Award. Moreover, the rehabilitation violated India's obligations and commitment under international human rights law to protect the right to housing.

Findings

I. Submergence during the Monsoons Results in Food Scarcity

The floodwaters during the height of the monsoons in late August and early September, 2002, submerged the crops and houses and washed away the personal property and livestock in some of the affected villages in Maharashtra and Madhya Pradesh visited by the FFT. In Jalsindhi, Jhabua district, Madhya Pradesh, and Domkhedi, Nandurbar district, Maharashtra, the FFT saw first-hand evidence of destruction of homes and standing crops. All along the river, homes and fields had been scoured bare by the monsoon waters, which had receded slightly by the time the FFT made its journey through the valley. The river also contained many trees that were still submerged, and villagers explained where their crops had disappeared under the water that had not receded.

The fact-finding team saw that Loharia Shakaria's hut in Jalsindhi, Madhya Pradesh had been submerged under water. Loharia Shakaria also reported that



Photo by Dana Clark

Loharia Shakaria's hut submerged in Jalsindhi in Madhya Pradesh.

²¹ This Task Force was set up by a GR issued by the Maharashtra government SSP31/2001/ Type No. 135/R-5, dated 5 December 2001. The Task Force was headed by the Divisional Commissioner of Nasik with the Sarpanch of Amlhi Vasahat; Sarpanch of Somaval Vasahat, Noorji Padvi of submergence village Danel; Clifton D' Rozario, Narmada Bachao Andolan; Sanjay Mahajan, Punarvas Sangharsh Samiti; Narmada Vikas Division Collector Taloda and Deputy Collector Sardar Sarovar Project division as members.



Photo by Dana Clark

Satyagraha house washed away at Domkhedi.

10 houses along with goats and bullocks and cows had been washed away in Chimalkhedi, a village downstream on the opposite bank. In Jalsindhi, people from the nearby Madhya Pradesh submergence villages of Akadia, Dubhkheda, Bada Amba, Sirkhedi, Anjanwara, Sakarja, etc, gathered to meet with the FFT and they reported similar destruction in their villages. One of the residents of Jalsindhi, Bava Mahare, told the FFT, "When we ask for proper land, we are shown jail cells. I have not done anything wrong, never bribed or anything. I have only been arrested when I've organised tribals and asked for things for the tribals. I have been arrested eight or nine times."

The team saw seven houses in Domkhedi, Maharashtra, that were visibly damaged by being submerged. These houses now are not safe or habitable, as the submergence has weakened and shifted the soil holding the wooden support beams and they are now dangerously askew. Furthermore, the mud floors of the homes have turned treacherous. The people who used to live in those homes are now living in the cattle sheds of their neighbours who live uphill. All seven hamlets of Domkehdi suffered from submergence, and altogether, 12 homes (with about 10 people per house), plus the village's gathering point, the *satyagraha* house, were washed away.

Khiyali Bai from Domkhedi stood in the rising monsoon waters inside her house with other villagers on the evening of 20 August 2002. On the morning of the 21 August 2002, when the water reached their lips, 200 police arrived with two barges and began arresting the people. Khiyali Bai said that she told the police, "This exercise of saving us is meaningless. We are asking for alternative land, why are you taking us to jail? How is that a safer place? We are in our own homes, we haven't committed any crime, why should we be arrested?" She was transported to three different towns over the course of 24 hours, and was then jailed in Dhulia, Maharashtra, for four days. The submergence waters destroyed her house and her family's crops and swept away all of their personal belongings.

The villagers told the FFT that they were gravely concerned about the availability of food supply and access to drinking water. With the destruction of the crops, they would have no food supply to see them through the year. Even when the

water receded, they would not be able to grow another crop. In addition, the deposits of mud left behind by the floods are hazardous to both people and cattle, making access to the river and drinking water supply treacherous. Even though they are facing such a food and water crisis, the villagers reported that the Madhya Pradesh government was not willing to provide any assistance. After much pressure, the Maharashtra government has agreed to give compensation. The Maharashtra Cabinet on 16 November 2002, has sanctioned three lakh eighty one thousand rupees (Rs 3,81,000) for people affected by submergence in 1999 and 2002.

The people refuted the claim of the government that the 2002 submergence at Domkhedi and Jalsindhi is due to natural floods and not dam submergence and therefore people are not entitled to compensation for loss of crops or destruction of homes. At Jalsindhi, Kailash Awasni told the FFT, "What we see now is not a river, it's a reservoir. It rises in metres but recedes in centimetres. We've never seen the river flooding and submerging our fields in monsoon until the dam. This is not natural, this is because of the dam. We should be paid compensation for our losses."

Mangliya Gaddher of Jalsindhi said that another reason the government will not provide relief to compensate the people whose houses and crops were submerged was that because according to the government, all of them were illegal encroachers as their land had already been acquired. The government may have acquired the land but the FFT found that the resettlement sites promoted by the three state governments have been generally rejected as unsuitable by the affected people. Many of the villagers are refusing to move to the sites, saying they cannot grow anything on the land because it is of such poor quality, is of insufficient size, or that there is no access to common property resources such as grazing land which is essential for their livelihood needs. Khiyali Bai from Domkhedi said her family had gone to see the resettlement site at Amlibari near Akkalkua, Maharashtra, and rejected it. Those villagers who shifted to the resettlement sites, even some established more than 10 years ago, have experienced a great deal of hardship and many of them have returned to their old lands even though they knew they faced submergence.

This observation by the FFT was confirmed by the report of the Task Force set up by the Maharashtra government²². The Task Force report acknowledges that people have left the rehabilitation sites they had moved to and returned to their original villages. According to the Task Force, 29 families in the submergence village of Manibeli, Maharashtra, have returned from the Parveta rehabilitation site in Gujarat because of very valid reasons and the government needs to have a policy to deal with such situations. The Task Force makes special mention of other such instances in other villages of tribals facing this peculiar problem.

By ratifying the ICESCR, India is under an obligation to guarantee the right to housing and the right to food of the people of the Narmada Valley. Submerging houses and crops without sufficient notice and not providing suitable and alternative lands without genuine consultation with the people has rendered the people affected by the SSP homeless and without access to food and drinking water²³. The governments are under an obligation to take steps to respect and protect the access of minimum essential food and housing.

²² See footnote 19.

²³ According to the United Nations Committee on Economic, Social and Cultural Rights this amounts to forced evictions. Forced evictions are a gross violation of human rights, particularly the right to housing. The state governments have created obstacles to the access to food by the SSP-affected people by causing submergence without suitable alternate land and housing.



Photo by Dana Clark

Gehalgaon rehabilitation site not ready for habitation.

2. Situation at the Rehabilitation Sites Found Inadequate

The FFT visited one of the oldest rehabilitation sites in Gujarat, Aggar in Narmada district. The team also visited some of the villages that would be affected in Madhya Pradesh when the height of the dam reaches 95 m and three related rehabilitation sites that are in the process of being prepared.

A. Gujarat

Even though the Aggar rehabilitation site was set up more than 10 years ago, problems related to land and other basic facilities are still unresolved. Dalsukh Sonji Bhai, who now resides in Aggar, said that first he was resettled in Gaddher where he found the land uncultivable. On asking for a change, he was sent to Aggar, where he has only received 3 acres of the 5 acres of land he is entitled to. He is still trying to get the remaining 2 acres of land. Dalsukh Sonji Bhai belonging to the Tadvi tribe asked the FFT, "What is the solution? We have sacrificed our land, our livelihood was taken away and we are given a pittance in return. We are asking only that our standard of living be restored and that has not happened. We have lost food security, grazing land, crop land and livelihood. Here I cannot even dream of having milk."

Savita Behn, an adivasi, has been forced to become a labourer from being a farmer after moving to the Aggar resettlement site. She now has to travel for 24 hours to Kathiawar, leaving her infant and two younger children at the resettlement site. She told the FFT of her desire to return to her previous home, even if she risked death by drowning. She felt it would be better than the miserable life that she is leading in the resettlement colony.

Bhikha Bhai Lalu Bhai, another adivasi residing at Aggar, has applied to the GRA for arable land. Besides issues related to land, Aggar does not have the facilities the government claims it has provided for rehabilitation sites in Gujarat.



Photo by Dana Clark

The fact-finding team speaking to the oustees living in Aggar, a rehabilitation site in Gujarat.

According to the Gujarat government's website, medical amenities and benefits like a mobile medical van, dispensaries at the rehabilitation sites, and nutritional supplements to children between one and five years through the Integrated Child Development Scheme (ICDS) are being provided at the resettlement sites. Dalsukh Sonji Bhai said there is no ICDS operational in Aggar and that a doctor only visits a dispensary for one hour a day, 3 km from the rehabilitation site. Moreover, Aggar has no cremation ground, provision for irrigation water, secondary school or transport facilities or any grazing land. People do not have access to the forest for firewood or medicinal plants, nuts and fruit which were a supplementary source of food and income.



Photo by Dana Clark

Resident of Aggar resettlement colony returns from gathering fodder for her cattle. The people and cows do not have access to grazing land.

B. Madhya Pradesh

The rehabilitation sites in Madhya Pradesh visited by the FFT were not suitable for habitation, even though they are designated by the government as constituting adequate rehabilitation for people threatened with submergence at the current dam level. The resettlement sites were, by and large, being rejected by affected communities. Some of the main reasons for rejecting the resettlement sites have been that the land was rocky and incapable of supporting crops; that there was no provision for agricultural land; that there was no provision for alternative livelihood; that there were disputes over title to the various house plots; that multiple assignments were made of the same tracts of land to affected villagers; and that the lands being allocated as resettlement sites would be submerged as the dam continued to rise.

The Chairman of the Grievance Redressal Authority of Madhya Pradesh in his interim report to the Supreme Court in June 2000 said that except Eklara, no other site that it surveyed could have been said to be a site established for Resettlement and Rehabilitation. The FFT saw the rehabilitation site chosen for Chikhaldia, Madhya Pradesh. Nine hundred families live in Chikhaldia, and 75 per cent of their agricultural land is slated to be submerged. One hundred and sixty eight families were recently issued notifications that they were in the anticipated submergence area at 95 m. These families are now listed in the government's Action-Taken Report as having been rehabilitated. In a meeting with the FFT, the people of Chikhaldia challenged the designation of these 168 families as rehabilitated, given that none of them had in fact been resettled or rehabilitated, and given that there is no suitable resettlement site available for residents of Chikhaldia.

The land initially chosen by the government for the Chikhaldia resettlement colony was rejected by the people because Rajendra Kumar Pandey, the owner of the land next to the resettlement site, at the same level, has been notified that his land will be submerged. He showed the FFT the area in the map and claims that the Narmada Control Authority (NCA) officials have accepted that there are risks of submergence with the Chikhaldia site. The site has not been developed

at all. The Madhya Pradesh government has therefore stated that the Chikhaldia people should abandon their homes and shift into the rehabilitation site already designated for residents of Gehalgaon but even that site is not ready for habitation and has only a row of metal emergency tin-shed shelters and a few locked and abandoned small houses, electric lines with no power, and incomplete construction of infrastructure such as a school and a clinic. More fundamental than the lack of infrastructure is the fact that the house plots are allotted for the people of Gehalgaon and the people of Chikhaldia do not want to be uprooted twice. Furthermore, the plots being offered do not provide for agricultural or grazing land and are therefore unsuitable to the needs of the affected people.

Gehalgaon and Gopalpura in Dhar district are listed as rehabilitation sites almost ready but the FFT found that at each rehabilitation site, there were three empty structures: the school, dispensary and grain store. The hand pumps were not working; electric poles did not carry any wires. There are a few small houses built at the sites but they were locked and abandoned. No agricultural land has been provided at these two rehabilitation sites, only house plots have been marked out. The people of Gehalgaon and Gopalpura pointed out that there was no agricultural land available nearby and asked how they were expected to cultivate land far away from their houses. The GRA (Madhya Pradesh) has instructed the Narmada Valley Development Authority that resettlement and rehabilitation sites developed or being developed should be located within a radius of 2-5 kilometres of the agricultural land²⁴. This did not appear to be the case in any of the Madhya Pradesh resettlement sites visited by the FFT.

The team visited the Halder Bhawaria resettlement site where cotton and papaya plantations of previous owners were still standing and there were no house plots allocated. Mohan Bhai of the submergence village of Bhawaria in Dhar district said that the site chosen by the government is low-lying and prone to water logging.

HLRN-HIC is concerned about the pattern that the FFT observed in the resettlement process; that is, the selection of rehabilitation sites that are likely to be submerged; no provision of agricultural land to those entitled to it. The oustees have neither been provided grazing land nor any other alternative to their livelihood options, such as harvesting minor forest produce that was available in their home villages.



Abandoned locked houses in Gehalgaon rehabilitation site in Madhya Pradesh.

Photo by Dana Clark



The undeveloped Gopalpura rehabilitation site in Madhya Pradesh.

Photo by Dana Clark

²⁴Summary records of the meeting of the committee of the R&R sub-group and the GRA on 28 February 2002.

The NWDT Award has categorically laid down that “every displaced family from whom 25 per cent is acquired shall be entitled to and be allotted irrigable land to the extent...a minimum of 2 ha²⁵.” Giving only house plots to oustees without irrigable agricultural land violates the award.

The government of Madhya Pradesh has admitted that it has not as yet made provisions for providing land for the affected people who are losing agricultural land. An affidavit filed by the government of Madhya Pradesh in the Supreme Court in May 2002 states that the R&R sites developed so far are for oustees who are not entitled to land²⁶. “As regards those who are required to be allotted agricultural land, the R&R sites for such project-affected families (PAFs) will be developed at the places where they agree to take land allotted to them²⁷.” Assigning people submerged at one level of the dam to land that is known to be vulnerable to submergence as the dam continues to go up is basically a shell game with numbers: it does not constitute effective rehabilitation. It would appear that this practice is designed to justify an increase in the dam height without paying comprehensive attention to the needs of affected villagers or considering the cumulative impacts of submergence. This short-sighted approach is being rejected by affected villagers, who are understandably refusing to move to lands that are likely to be submerged.

By not providing agricultural or grazing land and alternatives to their traditional livelihood sources at the rehabilitation site, India is also in violation of its obligation to protect the right to adequate housing under international human rights law. One of the basic components of the human right to housing is access to livelihood options. For rural and tribal populations, livelihood is dependent on agricultural land and common property resources such as grazing lands and forests. The rehabilitation of affected persons without alternative agricultural land and basic facilities does not comply with the requirements to protect right to adequate housing under international human rights law.

3. Problems with Land Rights in Tribal Areas

A phenomenon in tribal areas throughout the country is the non-settlement of land ownership rights. This has a very serious implication in the SSP-affected villages. With the land ownership rights of the tribals not recognised, appropriate rehabilitation is not available to them. In the submergence villages visited by the fact-finding team, this issue was repeatedly raised by the tribals. The adivasis said that the revenue records often did not reflect the factual situation of land use and ownership by the people.

From the testimonies of tribals from various villages, two main issues emerged. Dediya Jatriya, an 80-year-old man from village Anjanwara, Madhya Pradesh, told the team that according to the *tehsil* records, his father was the legitimate landholder while he (Dediya) was an adult son. This is despite his father having passed away more than 25 years ago. According to him, there are many people in a similar position in his village and the land records have not been changed to include their names. Kailash Awasni told the FFT that the government should recognise the forest land the adivasis have cultivated for generations as their rightful land and compensate them for the loss of these lands.

Bahaduria Narmadiya of Anjanwara said that there were more than 100 houses in his village and that there were more than 150 tribal people who are cultivating

²⁵The Sub-clause IV (7) of Clause IX (the land for land provision) of the NWDT Award.

²⁶Those losing less than 25% of their holdings, landless agricultural labourers, landless labourers and their adult sons are not entitled to agricultural land under the NWDT Award.

²⁷Page 12 of the affidavit filed by Mr. Vyas member rehabilitation NVDA on behalf of the Government of Madhya Pradesh in response to the Writ Petition (Civil) No.328/2002 Narmada Bachao Andolan Vs Union of India and others. This case was filed by the NBA after the NCA cleared the increase in the height of the dam. The NBA claimed that rehabilitation of those affected at 95 m had not been done, violating the previous Supreme Court directions.

land – revenue or forest cultivation or both. However, he said that the government records reflect only nine tribal cultivators in his village.

According to Loharia Shakaria, in almost all the villages in Alirajpur, Madhya Pradesh, the land rights of the tribals have not been recognised. This has been brought to the notice of the local officials, NVDA officials and the NCA officials, besides the GRA. The affected families, especially the tribals, have asked the government to bring the land records up to date and resurvey the village to include omitted families. The government has ignored these demands. Now when they face submergence, no compensation is being given because the government claims that this is forest land.

The Madhya Pradesh Rehabilitation and Resettlement Policy provides that encroachers will be treated as owners for compensation and allotment of land if encroachments are prior to 1987. Bhutiya from Dubhkheda said that the government has never bothered to survey his village to record the number of tribals who had cultivated forest areas before 1987. Huliya Patel of Domkhedi (Maharashtra) said that in his village there was no revenue land since the government had not taken up this process fully to convert forest cultivations to revenue records. While this process was carried out partially in the early 1990s, it was suspended before it was complete. Dadliya Karbari of Domkhedi said that the Maharashtra government has just completed the survey of forest cultivations but has yet to grant official and legal recognition by issuing land titles.

The government is obligated to recognise the land occupancy patterns of tribal communities as in Convention 107 of the International Labour Organisation but has failed to do so.

4. Ex-Parte Rehabilitation Violates State Policies and International Standards

While speaking to the affected people in the submergence villages, the FFT was repeatedly confronted with the issue of *ex-parte* allotments.

In December 1999, the NCA decided to make *ex-parte* allotments of house and agricultural land to “non-responsive” project-affected families, that is, families not yet accepting any rehabilitation offer of the state²⁸. In this process, the state delivers a notice via registered mail informing the oustees that they have been offered three choices of agricultural land. If they do not respond, they receive *ex-parte* allotment certificates by post informing them that they have been designated land in a particular resettlement colony. Once the mail is delivered, these people are then counted as those affected people who have been rehabilitated, though they have not physically moved from their original villages.

People interviewed in Jalsindhi said that nine project-affected families were given *ex-parte* notification of land in Gujarat, even though they had been asking for land in Madhya Pradesh. As per the NWDT Award, the people have a right to choose if they want to be resettled in their home state or in Gujarat, and they should not be forced to accept land in a different state. The NWDT Award clearly lays down that the people have a right to choose which state they want to be rehabilitated in and should be given an option of three alternate irrigated lands to opt from. In Chikhaldia, 16 project-affected persons have been given *ex-parte* allotments in Gujarat and are declared as rehabilitated in the Action-Taken Report

²⁸At the 59th meeting of NCA

of the government of Madhya Pradesh. People told the FFT that these families prefer resettlement in Madhya Pradesh and have indicated this to the local NVDA officials, NCA officials as well as Gujarat officials.

Gulsingh Bhamta of Bada Amba (Madhya Pradesh) said that he and his entire village wanted land in Gujarat and approached the NVDA officials. They were taken to Gujarat to select land but rejected the land as it was of very bad quality. They asked for better land but instead, the government served *ex-parte* allotments to them.

The extent to which the *ex-parte* allotments lead to rehabilitation only on paper is illustrated by a letter written by the Deputy Collector SSP, Nandurbar district, Maharashtra, on 14 May 2001, to the Upper Collector. In the letter, he says that on verifying the *ex-parte* allotments, several discrepancies were found. The allotments were made without surveying the plots and it was discovered that out of the 145 allotments made to project-affected persons at the height of 90m, there was land available only for 79²⁹.

The Justice Daud Committee report in June 2001 stated that it saw evidence and intimated to the authorities concerned that *ex parte* notices were being issued carelessly. Often, offers are made but there is no availability of land in the resettlement colonies. The Task Force set up by the Maharashtra government also examined the phenomenon of *ex-parte* allotments. In its report in September 2002, it found that some of the land being given as *ex-parte* allotments in Maharashtra was already being cultivated or was owned by other people and some of the land was uncultivable. The Maharashtra government in October 2001 has decided that in future, *ex-parte* allotments of agricultural and residential plots would not be made to SSP-affected families in Maharashtra³⁰.

On 7 January 2002, at the 51st meeting of the Rehabilitation and Resettlement Sub-Group, the Gujarat government submitted a note saying that out of the 883 *ex-parte* allotments made up to dam height 100m, none had come to actually take possession of the plot allotted to them. The Gujarat government suggested that if *ex-parte* allotments are not accepted by the project-affected families within three months, their entitlements to land and house should be cancelled and they should be given cash compensation.

Allocating unsuitable land or non-existent land through the *ex-parte* process is another attempt by the state governments to alter the NWDT Award and to absolve themselves of responsibility of rehabilitating the affected populations. *Ex-parte* allotments appear to be a tactic being used by the governments to inflate the numbers of rehabilitated to get permission for further raising of the dam height, without regard to the reality of how or whether people have been adequately rehabilitated. In actual fact, the people are still living in their original villages and when faced with submergence, will be rendered homeless. The *ex-parte* allotments are being used to coerce oustees to shift to land even if it is unsuitable, since refusal would leave them homeless.

Forcing people into houses and land which are not suitable amounts to forced evictions and is a violation of the right to housing guaranteed under Article 11(1) of ICESCR, in addition to violating provisions of the NWDT Award. For displacement to conform to the right to adequate housing, there should be genuine consultation with the affected population, sufficient notice of the eviction should be given and the alternative land with basic amenities and livelihood

²⁹Reference of letter: No/R&R/SSP/105/2001

³⁰Govt. of Maharashtra letter no. SSP 31/2001/CR 120/R 5 dated 22 October 2001. On 22 October 2001, the Maharashtra government informed the Naramada Control Authority of this decision.

opportunity should be made available. The UN Comprehensive Guidelines on Development Based Displaced lay down that affected persons should provide their full and informed consent as regards the relocation site.

5. Differentiating between Temporary and Permanent Submergence to Reduce Numbers of People to be Rehabilitated

The Madhya Pradesh government has differentiated between temporary and permanent submergence to reduce its

obligations and to try to obscure the number of people to be affected and rehabilitated at various dam heights. The NWDT Award clearly lays down that there will be no differentiation between permanent or temporary submergence. The NWDT Award defines oustees as *“any person who since at least one year prior to date of publication of the notification under Section 4 of Land Acquisition Act has been ordinarily residing or cultivating land or carrying on any trade occupation or calling or working for gain in the area likely to be submerged permanently or temporarily”*³¹.

It is of grave concern that the R&R Sub-Group by clearing the increase in the height of the dam has accepted the differentiation between temporary and permanent submergence and allowed the Madhya Pradesh government to alter the NWDT Award. On 8 February 2002, the Madhya Pradesh government reported to the R&R Sub-Group that 70 submergence villages were left for resettlement in the state at dam height 95 m³². On 26 February 2002, the government gave information about only 30 villages. No information was provided regarding the status of rehabilitation and resettlement of the other 40 villages coming under submergence at 95 m. On 18 April 2002, the Action-Taken Report submitted by the Madhya Pradesh government showed the project-affected families of only 30 villages would be affected at dam height 95 m when at an earlier stage the affected villages were shown to be 70. The reason given by the state government was that for giving clearance to dam height 95 m, rehabilitation and resettlement of project affected families of only 30 villages would be necessary, that is, those whose houses or agricultural land would be submerged permanently and whose houses would be submerged temporarily. In the remaining 40 villages, only agricultural land would be temporarily affected and hence Madhya Pradesh argued that at this stage the rehabilitation of those project-affected families would not be necessary. This position of the Madhya Pradesh government arbitrarily alters the NWDT Award’s definition of oustees which was upheld by the Supreme Court³³.

This designation of temporary and permanent not only violates the NWDT Award, it also has serious implications on the right to housing, land and livelihood of the people. If the floods of this year’s monsoons are any indication, the people in areas designated as “temporarily” submerged have suffered loss of home personal property, crops, cattle and livelihood. Even when the waters



These “temporarily” submerged houses at Doomkhedi were found unfit for habitation by FFT.

Photo by Dana Clark

³¹ Clause XI Sub-clause I (2) of NWDT Award.

³² As reported in the summary records of the consultations between the R&R Sub-Group and Madhya Pradesh Grievance Redressal Authority from February to April 2002.

³³ In its judgment in the Narmada Bachao Andolan Vs UOI in October 2000. See Annex 1 for directions of the Supreme Court.

recede, they will not be able to grow another crop for the rest of the year. They and their cattle have no access to clean drinking water. They are seriously affected and deserving of rehabilitation.

The situation in Madhya Pradesh illustrates that rehabilitation is being emphasised only as a numbers game, to prepare lists and tables and charts and documents, and even empty resettlement colonies, in order to create the illusion of rehabilitation. However, the charts and tables do not reflect reality in terms of who has been or will be affected or who has been rehabilitated. The emphasis seems to be on creating records and documents that can be used to support an increase in the dam height, rather than ensuring the right to housing of those affected by the project.

This is also a classic undermining of accountability—the agency is unable to meet the terms of the NWDT Award so rather than reconsidering the consequences of the project, it is trying to change the rules, lowering the standards, removing protections for vulnerable people, making it more likely that project-affected people will be impoverished and that their right to housing will be compromised.

6. Lack of Information about Displacement and Rehabilitation

Wherever the FFT went, they were confronted with the issue of uncertainty, confusion, misinformation or no information. The affected people were unsure when and who would be submerged; where they would be rehabilitated; what the entitlements were on being displaced and why agricultural land were not being given. The people reported that information in the government documents added to the confusion as they sometimes did not reflect the real picture at the ground level.

- (a) The residents of Chikhaldia, Madhya Pradesh, showed the FFT a home that had been declared affected at 95 m. They then pointed out a row of houses on the same street, built around the same time, located at an even lower level but not officially declared as affected at 95 m. The people questioned the accuracy of the surveys.
- (b) The residents of Chikhaldia affected at dam height 95 m have been declared rehabilitated in the Action-Taken Report of the Madhya Pradesh government submitted to the NCA in March 2002. The field visit of the FFT determined that they had not been.
- (c) The FFT witnessed a meeting at Sirsi in Madhya Pradesh where the villagers were discussing whether their village would be affected by the project. Some of the residents of the village had seen a notice up at the tehsil office newly listing Sirsi as affected. There was confusion amongst the villagers because Sirsi is not one of the 193 villages declared by the government as affected by the Sardar Sarovar Project.
- (d) Tribals of Jalsindhi, Madhya Pradesh, said that one of the hamlets of the village, Sindhyabari falia, would be submerged but the government officials have refused to accept this. The tribals are unclear about the extent of submergence since the government has never conducted ground-level surveys to demark the submergence zone in their area.

- (e) The tribals of Bhitada, Alirajpur Tehsil, Madhya Pradesh complained that they were being offered only cash compensation since according to the government they were losing less than 25% of their land. They said that all this time they were told that they will be losing their houses and their lands too and this is reflected in the official gazette of submergence and the notices served to them occasionally. Many of them have even been offered land in Gujarat which they refused since they prefer to be rehabilitated in Madhya Pradesh. There is uncertainty and confusion about availability of land for their rehabilitation and about designation of cash compensation.
- (f) The Madhya Pradesh government is attempting to justify giving oustees cash compensation instead of land by altering the provisions of the NWDT Award. At the Rehabilitation and Resettlement Sub-Group26 meeting in August 2001, the Madhya Pradesh government proposed an amendment to the Award which would give the displaced family the option of obtaining the full cash compensation for purchasing land in a village of its choice³⁴. The reason the Madhya Pradesh government proposed this course of action is that there was a paucity of cultivable government land in the state and it was difficult to arrange more land for the oustees.
- (g) There is uncertainty about the availability of land in both Madhya Pradesh and Maharashtra. By not providing any agricultural land at the rehabilitation sites, attempting to give people cash compensation and differentiating between temporary and permanent submergence, the Madhya Pradesh government has indicated to the affected people that there is no land available for rehabilitation. The Madhya Pradesh Grievance Redressal Authority 's interim report in June 2000 indicates the same, "(It) is not disputed that so far no irrigable land has been allotted to any PAF who is entitled to allotment of such land... It was stated on behalf of the state that no irrigable land was available for allotment ...³⁵" Even the Maharashtra GRA in May 2002, said that as of date the government of Maharashtra does not have sufficient land to resettle oustees³⁶.

To protect the housing rights of the people to be displaced by a project, requires as a prerequisite

- genuine consultation with the affected people to obtain correct estimates of numbers to be affected;
- active participation of the affected people in identification of alternative land for rehabilitation;
- dissemination of timely information about date of evictions, entitlements and availability of alternative house or land;
- decisions by governments about actions that cause displacement, such as raising the height of the dam, to be based on realistic information about the number of people to be affected, the number of people still facing rehabilitation, and the capacity of the governments to provide appropriate rehabilitation;
- transparency in the decisions taken by the government, so that the affected people and others know that they are based on realistic information.

³⁴ To the Sub-clause IV (7) of Clause IX (the land for land provision) of the NWDT Award.

³⁵ To the Supreme Court on 30 June 2000 in writ petition Narmada Bachao Andolan Vs Union of India and others, Writ Petition (C) NO. 319 OF 1994.

³⁶ The interim report filed in the Supreme Court on 31 May 2002 in the Writ petition (Civil) No 328/2002.

If following these prerequisites establish that rehabilitation cannot be offered, then the displacement is arbitrary and in violation of international human rights law, the policies of the World Bank, and Indian law.

These issues have been repeatedly raised by members of civil society and human rights groups; the Justice Daud Committee report and the UN Special Rapporteur on the Right to Adequate Housing.

The importance of genuine consultation and transparency of actions is illustrated by the findings of the Task Force set up by the Maharashtra government in December 2001. To get a correct understanding of the number of affected persons, the Task Force³⁷, headed by the Divisional Commissioner Nashik, conducted a thorough survey of the affected villages and the rehabilitation sites in Maharashtra. In each village, members of the Task Force sat with gram sabha to verify the revenue records and the forest records. The gram sabha nominated five elders of the village as witnesses. The head of the family on making a claim of not being included as an affected person had to show where his/her house/land is and how long the family had resided in the village. This had to be verified through documents if available, and the appointed witness. The report of this detailed exercise, which was ready in September 2002, exposed the staggering discrepancies in the number of displaced and affected people. For example, the government had earlier reported that at 95 m dam height, 17 project-affected families were yet to be rehabilitated. After the survey of the Task Force, the number of families to be rehabilitated was 379 declared and 918 undeclared families. Declared families are those that have been declared as oustees by the government. Undeclared families are those who will be displaced in practical terms but for some reason have not been officially declared oustees by the government. The survey of the Task Force has brought out the huge discrepancies between the ground situation and government records.

The work of the Maharashtra Task Force illustrates that as per the provisions of international human rights law, if the planning process includes genuine consultation and participation of affected communities it is possible to get the correct information. This is the first step in ensuring appropriate alternative solutions. Without appropriate and suitable alternatives, the displacement due to the construction of the Sardar Sarovar dam amounts to forced eviction which violates India's obligation to protect the right to adequate housing of the people. Displacement should not result in individuals being rendered homeless or vulnerable to the violation of other human rights³⁸.

7. Weaknesses of the Grievance Redressal Authority

The Supreme Court in 1999 mandated the setting up of a Grievance Redressal Authority for Gujarat, and in 2000 for Madhya Pradesh and Maharashtra, to look into the rehabilitation-related grievances of the project-affected people. Each of these GRAs is headed by a retired Supreme Court or High Court judge. The Rehabilitation and Resettlement Sub-Group of the Narmada Control Authority is required by the Supreme Court to consult the GRAs before giving a clearance that rehabilitation at a particular height is complete³⁹.

The role of the GRA is particularly crucial in the context of the order given by the Supreme Court on 9 September 2002. The Supreme Court has said that with

³⁷The Task Force consisted of officials; representatives of affected people and activists. See footnote 19.

³⁸The UN Committee on Economic, Social and Cultural Rights, General Comment 7, para 26. HRI/GEN/1/Re.5

³⁹See Annex I for directions of the Supreme Court.

the GRAs in place, there was no need for the Court to interfere⁴⁰ In reality, the GRAs, especially in Madhya Pradesh, have not been able to independently verify or adequately resolve the complaints of the affected persons. In a public meeting at Ekalwara (a submergence village in Madhya Pradesh), a speaker described the real picture of grievance redressal. She pointed out that “the Supreme Court has said, ‘Go to the GRA.’ The GRA then says, “We don’t have infrastructure, go to NCA.’ The NCA says, ‘Our hands are tied, go to the governments.’ The government says, ‘We don’t have any land, go to the GRA.’ We are left running around in circles.”

The FFT met with the secretary of the GRA in Madhya Pradesh and spoke on the phone with the chairperson of the Gujarat GRA to discuss the main issues relating to housing rights of the affected persons. A number of issues relating to the functioning of the GRA came to light. The secretary to the GRA in Madhya Pradesh told the FFT that about 4,000 applications had been submitted to the GRA prior to raising the height of the dam and that 1,800 are pending. He indicated that the cases coming to the GRA mainly relate to complainants’ status as project-affected; concern over the choice of the resettlement site; the lack of basic amenities at the resettlement site; the allotment of non-arable land; and the unmet claims of major sons and daughters.

The GRA in Madhya Pradesh has no infrastructure for independently investigating grievances or ensuring implementation of its decisions. The chairman of Madhya Pradesh GRA, at a consultation with the R&R Sub-Group on 18 April 2002, stated that there was a lack of infrastructure and that he could not ascertain the veracity of the information furnished by the NVDA. When complaints are received, they are sent to the NVDA (against whom most of the complaints are made) to respond and send reports to the GRA. The GRA does not have any means of independently verifying what the NVDA claims nor for ensuring that its orders have been obeyed by the project authorities at the ground level. In Chikhaldia, the FFT was told that an NVDA official had come to investigate a complaint filed with the GRA against his own Action-Taken Report which had made false claims of completing resettlement. This erodes the faith of the local people in the GRA process.

In Madhya Pradesh, the oustees also complained that the GRA had stopped making field visits and neither the chairman nor any other GRA official had visited the affected villages or the resettlement sites in more than two years. The GRA of Madhya Pradesh acknowledged that there have been no field visits since 2000. A resident of Chikhaldia said, “In this village, there is no resettlement site. The state government shows documents to the NCA and the GRA listing names and house plots, but there is no verification by NCA or GRA – there are no field visits to confirm.” Some of the affected people told the FFT that the GRA responds slower than the rising waters and the police force.

The issue of claims by major sons and daughters emerged in the FFT’s interview with the Madhya Pradesh GRA Secretary. One-fourth of the complaints/cases received by the GRA relate to status of major sons or daughters. Many people, particularly tribal people, are unable to provide birth certificates or other written evidence of date of birth and they therefore are being denied major son/daughter status. A related issue that needs to be clarified by the GRAs is the need for the

⁴⁰For the order of the Supreme Court see Annex 4.

date for determining majority status to be based on the date of submergence rather than the date of acquisition of the family's land.

The GRAs should be provided with enough resources to ensure that impartial visits to the project area take place to enable an appropriate evaluation of the facts on the ground. Grievance redressal mechanisms are very important or crucial for protecting the housing rights of people facing eviction. These mechanisms need to be given sufficient powers and provided infrastructure so that they can function effectively and independently.

8. Raising the Dam without Due Process

In October 2001, when the Supreme Court gave clearance to raise the height of the dam, it laid down certain safeguards and conditions. The Court upheld the NWDT Award and required construction to be carried as per its provisions. The Court also required a clearance from the R&R Sub-Group in consultation with GRAs that rehabilitation was complete at each stage before raising the height of the dam. It laid down that the height could be increased *pari passu* with rehabilitation. This means that construction and rehabilitation should make equal progress and should be related. The NWDT Award lays down that people should be resettled at least one year before the risk of submergence, and that they should be fully rehabilitated at least six months prior to raising the dam height.

The NCA seems to have ignored the prerequisites laid down by the Supreme Court when it authorised the height of the dam to be raised to 95 m on 17 May 2002.

- The FFT saw widespread evidence at the ground level that relief and rehabilitation of those affected at 95 m is not complete. This evidence included witnessing the impact of submergence during the 2002 monsoons; the unprepared conditions of the rehabilitation sites; the failure to provide adequate agricultural land to those losing land and the use of *ex-parte* allotments.
- By the Madhya Pradesh government's own submission, PAFs owning land at 95 m have not been given alternative land. The report of the Maharashtra Task Force shows a drastic increase in the number of PAFs to be rehabilitated at 95 m.
- The GRAs of Madhya Pradesh and Maharashtra have shown concern that the rehabilitation of the PAFs at 95 m was not complete six months before increasing the height of the dam.
- The Maharashtra GRA has stated that he has reservations regarding the resettlement of families affected at 90 m and 95 m and that the government does not have adequate agricultural land for the resettlement of affected families⁴¹.

9. Failure to Improve or Restore Standards of Living

The FFT notes that the policy of the state governments and of the World Bank is to improve or at least restore the standard of living of displaced persons. For example, the Madhya Pradesh policy states, "The aim of the state government is that all displaced families as defined hereinafter would after their relocation and resettlement improve, or at least regain, their previous standard of living

⁴¹An interim report of GRA (Maharashtra) filed in the Supreme Court on 31 May 2002, in the Writ Petition (Civil) No 328/2002. Narmada Bachao Andolan Vs Union of India and others.

within a reasonable time.” The Staff Appraisal Report for the World Bank loan stated, “The project’s oustees from the states of Gujarat, Madhya Pradesh and Maharashtra will be relocated and rehabilitated in accordance with the provisions of the NWDT decisions and the following principles and objectives: (a) The main objectives of the plan for resettlement and rehabilitation of the oustees are to ensure that the oustees will promptly after their displacement: (i) improve or at least regain the standard of living they were enjoying prior to their displacement.”

These policy provisions regarding improvement of the displaced’ standard of living and restoration of their livelihood and resource base have been violated in all three states. □

III

The Man Dam Irrigation Project

Background

The Man dam is one of the 30 large dams planned as a part of the Narmada Valley Project. A 53 m high dam is being constructed on the Man river, a tributary of the Narmada in Madhya Pradesh. The families affected by the project, in both the submergence areas and the command area, are predominantly tribal – Bhils and Bhilalas. The Detailed Project Report of 2001 states that 1,156 families will be affected by the project; 85 per cent of those families will be displaced. The other families will be losing less than 25 per cent of their lands. According to the government, 864 families will be affected. The Madhya Pradesh government formulated the Rehabilitation Policy for the oustees of Narmada Projects – Government of Madhya Pradesh, Bhopal, 1987. The policy provides that a minimum of 2 hectares of land will be given to all those who lose more than 25 per cent of their land. Only in exceptional circumstances does the policy allow the payment of cash compensation with a number of built-in procedural safeguards. If the adivasis are to be paid cash compensation, the Collector would have to verify that cash compensation would not adversely affect the interests of the adivasi family.

In 2001, during the monsoons the village of Khedi Balwadi – the first dam-affected village – was threatened with submergence. The affected people called on the Madhya Pradesh government to provide land-for-land⁴² as required by the state rehabilitation policy. Lacking alternative lands, the people refused to leave their homes despite the risk of flooding with the monsoon rains, saying, “Where will

⁴²In the initial stages cash compensation was given to affected families and only in 1996 did the oustees get information that under the rehabilitation policy they were entitled to alternate land.

we go? What will we do?" In the face of the peoples *satyagraha*, to avoid the risk of drowning the village, the project authorities blasted the sluice gates of the dam and released the monsoon flow.

In 2002, leading up to the monsoons, the situation in Man remained tense and difficult. In March 2002, the government announced a special rehabilitation grant package worth Rs 12 crore (Rs 120,000,000) meant for enabling the oustees to buy irrigated land. In spite of this, people could not be rehabilitated as per their demands of land-for-land because the grant was made on rates for non-irrigated land, based on 1997 land values –which is an inaccurate measure for irrigated land that is being lost in 2002.

In the same month, the Indian People's Tribunal on Environment and Human Rights, with a panel of eminent citizens⁴³, held public hearings of the affected people and warned that the villages would be submerged during the monsoons, without alternative land being provided to the affected people. On 15 May 2002, the oustees went on a 36-day *dharna* and a fast to demand for rehabilitation before submergence. While the oustees were on *dharna*, on 17 May 2002, school buildings were razed to the ground in the submergence villages; all hand pumps (the only sources of drinking water in the summer in Dhar district that had faced a drought for the last four years) were removed; electricity connections were severed; transformers lifted away; and trees were chopped down in an attempt to make living conditions miserable and coerce the villagers into abandoning their homes.

In July 2002, the people were evicted from Khedi Balwadi by violent use of police force and in August 2002 the village was submerged. In this background, after the monsoons, HIC sent a fact-finding team. The FFT visited the area around the submerged village of Khedi Balwadi and held a meeting with some of the dam affected people from Khedi Balwadi, Khanpura, Golpura, Gadthaghat, Badlipura, Meena Khedi, Sangwi, Retiyaon, Kacchoda, etc, and the displaced tribals from Khedi Balwadi who were living in tin shed.



Photo by Dana Clark

Child displaced by Man reservoir, now living in a tin shed. All residents of the tin sheds are struggling with a lack of food supplies.

Findings

I. Violence Used to Evict People from Their Homes

The villagers of Khedi Balwadi told the FFT that on 20 July 2002, several hundred police personnel, a large number of whom were armed, surrounded the village and began forcibly evicting people from their homes, forcing them into waiting trucks. It was market day, and most of the men were away from the village. The women questioned why they were being taken from their homes when they had not been rehabilitated, and had done nothing illegal. The police dragged them into trucks and began beating those who resisted with lathis. In the process, many of the women's saris came off.

⁴³Justice G. G. Loney (Retd);
Dr Nandini Sundar; Advocate
Vinod Shetty.

Mangli told the FFT that when the police came, she went outside to see why they were there. Her baby was in the cradle inside her house. The police ordered her into the truck and she said, "I'm not going anywhere without my baby." She said the police tried to push her and that she lay down on the ground and refused to leave without her child, "I want to get my child, she's only three months old." She testified that the police used abusive language, hit her with lathis, spat upon her and dragged her away through the mud. Other women reported to the FFT that Mangli's 12-year-old daughter, Boondri, tried to come to her mother's assistance and was in turn beaten badly by the police. They reported that the police put a cloth around Boondri's neck and pulled it from both sides, and banged her head against the rails of the truck. When the trucks drove away under armed guard, Mangli's three older children were on board, under arrest, and her three younger children were left behind – a two-year-old, a one-year-old and the three-month-old baby in the cradle. The two-year-old had to carry the infant and lead the one-year-old to a neighbouring village to find family members.

Altogether, 25 small children, including breastfeeding infants, were separated from their mothers. The people were loaded into the trucks and taken to Kesur and Aamkheda, approximately 40 and 70 km away from their village, where they were then kept under armed guard. When activists from the Narmada Bachao Andolan, who have been supporting the villagers in their demands for appropriate rehabilitation, learned of the internment, they came into the camp and compiled a list of the missing children. Within two days, all of the children were located in neighbouring villages, and breastfeeding babies were finally reunited with their mothers, who had suffered emotional anguish and physical pain as a result of being separated from their children.

Ram Kuwar, who was away from the village when the forced evictions took place, told how she came home the next day and found that all of the houses were occupied by the police. The houses had been ransacked and the police had been killing and eating the chickens. She said she saw signs that the police had dug holes in the walls of the houses, looking for valuables such as the women's silver jewellery. The people also said that they have filed criminal complaints⁴⁴ against the police for theft of jewellery.

The villagers told the FFT that when some of them managed to escape from the police camps, they went to the state government offices in Bhopal and Indore to call attention to the destruction and brutality faced by them and to demand that their families and neighbours be permitted to return to their homes. They received an order from the Grievance Redressal Authority that said that the people and their belongings should be taken back to their original village. The police, however, refused to honour the order. By the time a second order was issued, the project authorities had closed the sluice gates and the village had been submerged. When the people returned to their village, everything was gone, lost under the waters of the reservoir.

Actions of the police amount to criminal assault and are grave criminal offences under the Indian Penal Code. There can be no justification by the police for beating people, molesting minor girls or separating babies and infants from their mothers. The Supreme Court of India has laid down clear mandatory procedures

⁴⁴FIR, that is, First Information Report, which is the first step in a criminal complaint.

that must be followed while detaining or arresting people, none of which were followed in this case.

The treatment of the children during forcible evictions violates India's obligations under the Convention on the Rights of the Child (CRC). Article 16 of the CRC prohibits attacks on the privacy, family and home of the child and asks state parties to protect children from such attacks. During the evictions the women and children of Khedi Bhalwadi were subjected to cruel, inhuman and degrading treatment, which violates Article 37 of the CRC. The International Covenant on Civil and Political Rights (ICCPR) ratified by India also prohibits such inhuman and degrading treatment and arbitrary arrest and detention⁴⁵.

The Grievance Redressal Authority, whose orders are final and binding on the state government, has been critical of the police action. In its interim order dated 31 July 2002, Direction No. 4 states: "The Rehabilitation Policy of Government of Madhya Pradesh states clearly that the resettlement of the people affected should be done well in advance of submergence. In this matter, the full rehabilitation has not yet been done, nor full compensation paid. In these circumstances, to forcibly evict the people and take them at places 45-75 km away from their present homes where even the facilities are not yet ready can never be called as appropriate or correct."

Using violence to remove the villagers from their homes and closing the sluice gates to increase the water levels so that their houses are submerged amounts to forced eviction under international human rights law. The UN Commission on Human Rights recognises that the practice of forced eviction involves the involuntary removal of persons, families and groups from their homes and communities, resulting in increased levels of homelessness and in inadequate housing and living conditions⁴⁶." The Commission also recognises the fact that "forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing (and) the need for immediate measures to be undertaken at all levels aimed at eliminating the practice of forced evictions⁴⁷."



Photo by Dana Clark

A meeting of the affected people on the banks of the reservoir which submerged Khedi Balwadi.

⁴⁵ Article 7 of the ICCPR.

⁴⁶ Resolution 1993/77 of UN Commission on Human Rights

⁴⁷ Ibid

2. People Rendered Homeless and Facing Risk of Starvation Due to Flooding

The fields, crops and homes of some of the affected villages were completely submerged due to the monsoons and the closing of the sluice gates on 9 August 2002. The FFT could see only the trees above the water line. People from Khedi Bhalwadi, Godaghat, Golpura and Sangwi and other affected villages met the FFT on the banks of the reservoir that submerged the village of Khedi Bhalwadi and gave their testimonies. The FFT was told by the villagers that land and homes of 65 families in Khedi Balwadi have been completely submerged and others were partially affected. The people pointed out where their village and homes once stood and were now under water, using submerged trees as landmarks. The land



Photo by Dana Clark

People affected by the Man dam living in sheds after their homes and fields were forcibly submerged.

and homes of two families have become islands and are completely cut off. The FFT visited the area where the people displaced by sudden submergence are now living. The people of Khedi and other villages are now living in life-threatening conditions in tin sheds on a hill overlooking the reservoir that has flooded their homes. Their food security has been severely threatened; all of their standing crops and most of their food supply has been destroyed. Many of the residents interviewed by the FFT expressed a fear of starvation. With the standing crop submerged and no land to work on, food security was a very immediate and serious concern.

People have been rendered homeless due to the willful and deliberate actions of the government. Building the dam and closing the sluice gates has rendered the people affected by the Man project homeless and without adequate food, in violation of all applicable laws and policies.

By willfully and deliberately flooding the villages affected by the Man project, the government of Madhya Pradesh has violated the right to adequate housing of the people as protected in Article 11(1) of the ICESCR. The government is also under an obligation to respect and protect the right to food. As is illustrated in this case, forcible evictions and rendering them homeless has also deprived the affected people of adequate food. The UN Committee on Economic, Social and Cultural Rights has said that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights. The state parties to the ICESCR are under an obligation to respect, protect and fulfill the right to food⁴⁸. The direct actions of the Madhya Pradesh government which caused sudden submergence and displaced people has taken away the food security of the dam-affected people.

3. Inappropriate Use of Cash Compensation and Denial of Rehabilitation Entitlements to the Affected People

The affected people testified to the FFT that they had been given inadequate cash compensation about 10 years ago between 1991-94. They were forced into taking cash compensation by the police, after putting thumb impressions on documents that they could not read. They testified that they had been told that their homes

⁴⁸General Comment 12 of UN CESCR paras 4, 15.

would not be affected and that the compensation they were being given was for partial loss of croplands. They also said that the cash compensation had been calculated for un-irrigated land whereas they owned irrigated land and in fact were able to grow three crops a year. They said that in the earlier years they had never been informed about their right to get alternative land for their land which would be affected by the dam. Nor had they been given information on the full extent of submergence caused by the dam.

Bheru Singh, an elderly man from Khedi, explained the situation 10 years ago when cash compensation was apparently paid: "In the beginning, they told us that they were going to build a very small dam, that none of the houses would be submerged but some of our lands might be affected, so here, take this money as compensation for that. We took the money and they made a big dam and made fools of us." He said when people raised questions, they were told, "If you don't take the money, we'll call the police and thrash you." An Singh, the Patel of Khedi Balwadi in Dhar district, said that his land was submerged without being properly surveyed. He claims he was cultivating 52 bighas of land but the government records had listed only 43 bighas. He had asked for a re-survey and filed a complaint with the GRA. The GRA ordered a new survey, but the land was submerged before it could be done. The submerged land was fit for multiple cropping and had ample fruit trees that were shared with the village as common property resource. Gul Singh Jogdia said that he had 30 bighas of land but was forced to accept cash compensation and that too for 24 bighas only. Roop Singh testified that he has been offered Rs 25, 000 for 12 bighas of irrigated land when the market value of similar land is Rs 55,000 per bigha.

Bhairav Singh testified that the tribals were not informed about the extent of submergence. They were told that the Man dam is small and will not have wide-scale submergence, that their houses would not be affected.

The affected persons who are predominantly adivasis were denied essential information. The Rehabilitation and Resettlement policy of the Madhya Pradesh government provides for land-for-land and allows cash compensation only in exceptional circumstances with safeguards to be followed by the state to show that cash compensation is not detrimental. Repeated testimonies of the people illustrate that no effort was made to give information to the people, nor was there any verification or certification before giving cash compensation. In matters relating to right to life, housing and livelihood, information has to be provided proactively by the state to the people. This becomes more significant and necessary where people do not have the means to access information as in the case of adivasis affected by the Man project. The affected people cannot be regarded as rehabilitated if they were coerced into taking cash compensation without full knowledge of their entitlements.

The Special Rehabilitation Package announced for the Man oustees in March 2002 has also not helped in providing alternate land for the oustees as it was meant to. The FFT was informed by the oustees that they were being paid as per rates for un-irrigated land in 1997. This made it impossible for them to buy irrigated land in 2002. Even though the oustees had identified land, they had not been able to buy it. Moreover, the compensation for the trees and wells is being subtracted from the amount being given now.

To protect the right to adequate housing, it is essential that the displaced people have access to livelihood. The right to housing has no meaning without the availability of livelihood opportunities. For tribals, agricultural and grazing land and access to natural resources are the means of livelihood. This is a fact that has been accepted by the Government of India. The Union of India in its submission to the Supreme Court in WP 319/1994 has said, *“Cash compensation was the practice which resulted in the resettlement of displaced families becoming unsustainable due to squandering of money. This type of rehabilitation programme deprived the poor, illiterate tribals from their lands, houses, wages, natural environment and their socio-economic and cultural milieu.”*

The International Labour Organisation’s (ILO’s) Convention 107 protects the rights of the indigenous people and has been ratified by India. ILO 107 requires states to ensure that the standard of living of the indigenous peoples is not lower due to displacement⁴⁹. The Government of India by its own submission agrees that cash compensation is unsuitable to ensure the protection of the human rights of the adivasi people. Nonetheless, all of these provisions and lessons are being violated in the context of the Man dam.

4. Weaknesses of the Grievance Redressal Mechanism

Grievance redressal mechanisms are very crucial to the protection of human rights. There exists a Grievance Redressal Authority headed by Mr Ravindra Sharma. The Chief Minister of Madhya Pradesh requests those aggrieved by the acquisition and rehabilitation process to approach the GRA but the government of Madhya Pradesh itself has repeatedly ignored the GRA, thereby undermining its effectiveness. As a result, local people do not have access to competent authorities for redressal of their concerns, issues which are crucial to their survival and their ability to restore their lives and livelihoods.

On the demand of the affected persons, Expert Advisors⁵⁰ to the GRA were appointed by the Madhya Pradesh government to ensure the rehabilitation of Man Dam oustees was set up on 18 June 2002. On the basis of advice by the experts, the GRA was to guarantee complete rehabilitation by 31 July 2002. Despite the fact that the Expert Advisors were holding meetings with the affected people till 18 July 2002, the government sent the police to Khedi Balwari two days later and used force to evict people and close the sluice gates, which flooded the villages and caused arbitrary and illegal displacement. □

⁴⁹Articles 2(2)(b) and 12(1) of ILO 107

⁵⁰The government has asked Mr. Ravindra Sharma, Chairman, Grievance Redressal Authority (GRA) of Narmada Valley Development Authority (NVDA) to look into the rehabilitation of the oustees of Man dam, under the special advice of former Commissioner of SC/ST Commission, Dr B.D. Sharma, and veteran journalist Shri. Prabhash Joshi.

IV

Recommendations

On the basis of the FFT's observations and findings on rehabilitation of the Sardar Sarovar Project and the Man Irrigation Project-affected persons, HLRN-HIC has catalogued a pattern of deprivation of the affected population, including a pattern of inhuman treatment of adivasi/tribal communities. The enumeration of violations, however, is only part—albeit an essential part—of the task at hand. The remaining objective is to identify and implement remedies.

While posing elements of a solution, HLRN-HIC rests on facts already gathered here, but also with knowledge of coming danger. HLRN-HIC cannot but forewarn that an increased dam height will ensure that the 2003 monsoons will further destroy their life and property. Given this advance knowledge, officials and institutions have an opportunity to demonstrate good-faith toward repairing existing damage to lives and property avoiding further destruction. In light of the moral and legal breaches already underway, and considering the affected persons material and nonmaterial losses, HLRN-HIC proffers the following recommendations in the framework of the human right to adequate housing.

I. Sardar Sarovar Project

To the Prime Minister of India

In order to abide by India's constitutional provisions, covenanted obligations and multilateral commitments to protect the right to adequate housing, the Prime Minister bears the obligation of state to:

- Impose an immediate moratorium on any increase in the height of the Sardar Sarovar Project until all project-affected families at the present (95m) height have been fully rehabilitated in accordance with all applicable laws and policies;
- Ensure that rehabilitation provides the affected people—many of whom are tribals—with alternative land-for-land, including agricultural land and grazing land;
- Oversee implementation of a fair compensation process and outcome for PAPs’ loss of access to common property resources, such as the river and/or forest produce, as an important component of their livelihood and their immediate prospects for sustainable social development;
- Clarify to state authorities their constituent obligations to uphold covenanted Indian protections of the human right to adequate housing;
- Ensure that the Indian Union uphold the NWDT Award within the framework of a public promise to respect the rights of the affected persons without derogating the provisions of the NWDT Award.

To the National Human Rights Commission of India

In its independent capacity, the National Human Rights Commission (NHRC) of India occupies an important role that should contribute to solutions to the suffering in the Narmada Valley. HLRN encourages the NHRC to investigate and monitor the displacement and rehabilitation of the project-affected persons to ensure protection of rights guaranteed under India’s Constitution and human rights treaty obligations.

To the State Governments of Maharashtra, Madhya Pradesh and Gujarat

Each state government concerned bears direct responsibility to uphold its trilateral commitment to ensure the well-being of the PAPs. The FFT found that the projects’ implementation has worsened PAPs’ living conditions below standards of human dignity. As a remedy, the states should:

- Ensure that food stocks are made available to people affected by 2002 monsoon submergence, as their food-security situation is dire;
- Plan and take ameliorative measures, in consultation with affected people, to address their drinking-water problems arising during the 2002 monsoons;
- Ensure that rehabilitation satisfy project-affected persons’ livelihood needs, including by allotting alternative irrigated agricultural land acceptable to PAPs and consistent with entitlements under the NWDT Award. For instance, these agricultural lands need to be located near homes;
- Guarantee that the rehabilitation sites be chosen and developed through consultation and active participation of the project-affected persons. Project planners should not only deal with the project-affected community men. They should consult women and children about their needs and preferences, and involve them in the decision making at all levels;

- Correct the practice of forcing PAPs to land slated for future submergence. States must provide PAPs, who are otherwise displaced and dispossessed, with appropriate alternative land with tenure security, and free from the risk of submergence;
- Cease forthwith all *ex-parte* notifications in the allotment of land and house plots. That practice, particularly in Gujarat and Madhya Pradesh, contravenes the NWDT Award. As per the provisions of the NWDT Award, the project-affected families possess a right to choose the state of their resettlement and the type of agricultural land allotted to them. (The Maharashtra government has decided not to issue any more *ex-parte* allotments. Similarly, Gujarat and Madhya Pradesh have to stop *ex-parte* allotments immediately. Those already given *ex-parte* allotments should not be considered rehabilitated without independent, credible, on-the-ground verification.)
- Provide the Grievance Redressal Authority with the necessary infrastructure to investigate complaints in a timely and comprehensive manner. (This is essential for the GRAs to be effective at monitoring violations of human rights and for protecting the rights of the displaced persons. In particular, the GRAs must go to the field to evaluate the situation themselves and regularly. The State must investigate and correct failures of project authorities, thus, to honour the orders of the GRAs.)
- Prohibit—independently, jointly and collectively—arbitrary misapplications of the NWDT Award such as providing cash compensation to those entitled to land-for-land, differentiating between “temporary” and “permanent” submergence, or making *ex-parte* allotments of land and house plots;

To the Madhya Pradesh State Government

Special circumstances that the FFT discovered in Madhya Pradesh require special actions on the part of the state authorities there to improve their performance, particularly in order to:

- Immediately cease and reverse the arbitrary practice of differentiating between temporary and permanent submergence (to escape compensation/rehabilitation claims), flagrantly violating the NWDT Award, which explicitly repudiates such a distinction. (The Award recognises that all such displacement is due for full rehabilitation and compensation.)
- Provide land for land—and not cash compensation—to those losing land, in particular the tribal communities;
- Clarify the prevailing confusion and misinformation about the availability of land, the numbers of entitled persons requiring land, and related matters. Accordingly, Madhya Pradesh needs to establish a mechanism to ascertain the exact number of affected persons and especially, to what extent they have been rehabilitated. The state government should set up an Expert Committee or Task Force, similar to the one in Maharashtra, to conduct an accurate, house-to-house surveys to ascertain the exact number of people being affected, document and learn more about their socioeconomic status and the anticipated impacts of displacement, and make a more-accurate determination of their rehabilitation status. The Expert Committee should

be comprised of government officials, representatives of the affected persons and representatives of the Narmada Bachao Andolan;

- Compensate the people who have endured submergence during the monsoons. Such compensation has to cover damage to crops, homes, personal property, cattle and other losses. The Madhya Pradesh government should learn and implement the lessons of the relevant Maharashtra experience as soon as possible.

To the Rehabilitation and Resettlement Sub-Group of the Narmada Control Authority

In their specialized capacity, the R&R Subgroup bears moral and legal responsibility to:

- Refuse to authorise any further dam height increase until all the affected people at 95 m have been rehabilitated, as per the NWDT Award and related policies, at least six months before anticipated submergence. The affected people should be “rehabilitated in fact,” and not based on paper reports that misrepresent the reality on the ground;
- Diligently conduct investigative field visits to the submergence and rehabilitation areas, in order to monitor and ascertain the extent of the rehabilitation of the affected people in compliance with the NWDT Award provisions and related state policies. The R&R Sub-Group must take responsibility for ensuring the reality and effectiveness of rehabilitation, which cannot happen without an increased presence in the field;
- Ensure the integrity of its terms of reference, including by resisting all state government attempts to alter or violate the provisions of the NWDT Award.

II. Man Irrigation Project

To the Prime Minister of India

In order to abide by India’s constitutional provisions, covenanted obligations and multilateral commitments to protect the human right to adequate housing, the Prime Minister bears a particular responsibility to ensure that specific measures be taken effectively. Therefore, the Prime Minister of India should engage his good offices to:

- Ensure that the sluice gates of the dam be opened and that all construction on the dam cease immediately until rehabilitation of the affected persons is completed in accordance with Madhya Pradesh Rehabilitation & Resettlement policy and international human rights law. The flooding of homes without rehabilitation has violated the human right to adequate housing with devastating consequences to individuals and communities.
- Ensure compliance with the principle of nondiscrimination against the indigenous people affected by the Man Dam, in particular their human right to adequate housing under the International Convention on the Elimination of All Forms of Racial Discrimination. They must be rehabilitated by providing comparable, alternative land and compensation for common property resources they have lost.

To the National Human Rights Commission

In its independent capacity, the National Human Rights Commission of India occupies an important position so as to contribute toward a solution to the Man Irrigation Project-related suffering. HLRN-HIC strongly encourages the Commission to:

- Monitor the displacement and rehabilitation of the project-affected persons to ensure protection of rights guaranteed under India's Constitution and human rights treaty obligations;
- Investigate the atrocities committed against the affected people, especially women and children, from May 2002 until the closing of the sluice gates. In particular, the NHRC should give special attention to the official use of force and physical violence to evict people from their homes in July 2002, the separation of women and children, the abandonment of approximately 25 very young children and infants, and the practice of keeping evictees under armed guard against their will until their village was submerged;
- Inquire into the failure of the project authorities to honour the order of the GRA such that the people should be returned to their homes in their original village. (Officials flouted this order by flooding the village.)

The Madhya Pradesh Government

The FFT found especially grave circumstances in Madhya Pradesh that require urgent action on the part of the state authorities to improve their performance, including for Madhya Pradesh government to:

- Declare a moratorium on the raising of the Man Dam's height until resettlement and rehabilitation issues are resolved through good-faith negotiations with affected people;
- Immediately stop and redress all use of violence against dam-affected people and their supporters, prosecuting perpetrators and compensating victims;
- Launch an investigation into the particular events surrounding the eviction of villagers from Khedi Balwadi, and apply the provisions of the Indian Penal Code to prosecute police personnel who criminally assaulted the women and children of Khedi Balwadi;
- Immediately provide food, adequate shelter, access to livelihood, clean drinking water, access to school for the children and transportation for the people displaced by the 2002 submergence;
- Compensate fairly those project-affected people, whose lands have been arbitrarily submerged during the monsoons, thus violating their right to housing and adequate standard of living. Compensation should cover losses, including the damage to PAs' lands, crops, food supply, livelihoods, homes and personal property, as well as the trauma, pain and suffering that they underwent as a result of the violent evictions;
- Purchase lands that have been identified by the villagers to provide the displaced persons' entitled land-for-land compensation. For example, irrigated land of the displaced persons should be replaced with irrigated

lands. All this should have been done well before the submergence took place;

- Calculate the land rates under the special rehabilitation grant at the current rates, so that the oustees are able to buy alternative land. Currently, the oustees are being reimbursed at 1997 *unirrigated* land rates, making it impossible for them to buy irrigated land in 2002–03;
- Immediately provide basic amenities, such as electricity connections, hand pumps and schools at the sites where PAPs are currently residing until such time as they are provided with alternative lands and have been fully rehabilitated;
- Make necessary provisions, including effective training and supervision, to ensure that officials recognise and respect the rights and needs of major sons and daughters, widows and landless persons who have so far been left out of compensation efforts;
- Consult and ensure participation of affected communities, as per international human rights law and jurisprudence, in identifying the location and type of rehabilitation sites. The MP government policy makers and officials bear an obligation to implement the affected people's a right to be resettled as a community, as a village, requiring that adequate land be provided in one location to enable community-based resettlement.

III. General Recommendations

To the Prime Minister of India

The overall situation in the context of large-scale development in India urgently requires steady and progressive improvement of government performance in order to abide by the minimum standards set in the Constitution of India, treaty obligations and other multilateral commitments to protect the human right to adequate housing. In this light, the executive level of government bears a particular responsibility to ensure that corrective measures be taken at the policy level. Therefore, the Prime Minister of India should engage his good offices to:

- Invite and cooperate with the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (1) to assess the impact of development and conservation projects, related laws and policies on the human rights of adivasi/tribal communities and (2) to discuss a framework for better protection of their rights;
- Invite and cooperate with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living to assess the situation of housing and land rights in the rehabilitation of people affected by different development and conservation projects, in particular the situation of women, children, indigenous peoples and other marginalised people;
- Ensure that the government present its overdue report to the UN Committee on Economic, Social and Cultural Rights with concentration on the status and implementation of laws and policies in India to protect the rights

recognised in the Covenant, in particular the right to housing and land of the people displaced by development projects;

- Establish and maintain an effective moratorium on the further construction of the Narmada Valley dams (including Man) until both the federated states and the Indian people have an accurate sense of what land is available for rehabilitation, and a longer-term plan is in place ensuring that
 - (1) people will not be resubmerged and
 - (2) that the requirements of all relevant policies be met before any project proceeds further.

This is in view of the extensive violations of the human rights to food, land, housing and livelihood occurring in the Narmada Valley, auguring a state of project-affected persons' extreme deprivation;

- Initiate and ensure effective conduct of a comprehensive national-level review of displacement and rehabilitation as a result of dams, especially those being built in the Narmada Valley.

IV. Recommendations to the United Nations Human Rights Mechanisms

As guardians of the treaties to which India has ratified and acceded, the legal monitoring bodies within the UN human rights system are urged here to give attention to the plight of those suffering from India's noncompliance with the minimum human standards. Under treaty, India is duty bound to other States Parties to the treaties, as well as to those persons living within its state jurisdiction and effective control. In particular, the various UN human rights mechanisms can provide an important element to the resolution of the dismal human rights situation by closely monitoring India's compliance to international law obligations and guiding the government of India on compliance and enforcement. HLRN-HIC encourages the engagement of these mechanisms, including:

- The UN Committee on Economic, Social and Cultural Rights publicly reminding the Government of India of its obligation to report on the extent to which India has observed the rights guaranteed in the Covenant, in particular, the protection of the right to housing, food and health of those displaced by development and conservation projects;
- The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people requesting the Government of India officially to invite him for a mission in India and to provide information on the how laws and policies are affecting the human rights of the adivasi/tribal communities in India, particularly through displacement arising from development and conservation projects;
- The UN Special Rapporteur on adequate housing as a component of right to an adequate standard of living requesting the Government of India to send information and officially inviting him to a mission in India to ascertain the impact on the right to housing of people displaced by development and conservation projects, in particular the impact on women, children and indigenous peoples;

- The Representative of the UN Secretary-General on internally displaced persons studying the extent of internal displacement occurring in India due to development and conservation projects, in particular, and ascertain to what extent the present safeguards are sufficient to protect the human rights of the affected people.

V. Recommendations to the World Bank

The World Bank has assumed a significant role and responsibility in the Narmada Valley dam projects, including funding, technical guidance and investigation of the social and environmental impacts. HLRN-HIC urges the Bank to countenance the results of that early role and to contribute further to correcting the destructive legacy of these particular Narmada Valley development projects in the following ways:

- Publicly acknowledging the continued violations of its own policies in the context of implementation of the Sardar Sarovar Projects;
- Calling for a moratorium in an increase in the dam height in order to ensure that there is no more arbitrary displacement. The moratorium should continue until the project is brought into compliance with relevant World Bank policies, the terms of the loan agreement, applicable state policies and the terms of the NWDT Award, and until there is a realistic Resettlement and Rehabilitation plan and its implementation for all people displaced and threatened with displacement by the SSP. □

Annex I

Directions of the Supreme Court in *Narmada Bachao Andolan Vs Union of India and others*, Writ Petition (C) NO. 319 OF 1994

Directions

While issuing directions and disposing of this case, two conditions have to be kept in mind, (i) the completion of project at the earliest and (ii) ensuring compliance with conditions on which clearance of the project was given including completion of relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental protection in compliance with the scheme framed by the Government thereby protecting the rights under Article 21 of the Constitution. Keeping these principles, in view, we issue the following directions.

- 1) Construction of the dam will continue as per the Award of the Tribunal.
- 2) As the Relief and Rehabilitation Sub-group has cleared the construction up to 90 meters, the same can be undertaken immediately. Further raising of the height will be only *pari passu* with the implementation of the relief and rehabilitation and on the clearance by the Relief and Rehabilitation Sub-group. The Relief and Rehabilitation Sub-group will give clearance of further construction after consulting the Grievances Redressal Authorities.
- 3) The Environment Sub-group under the Secretary, Ministry of Environment and Forests, Government of India will consider and give, at each stage of the construction of the dam, environment clearance before further construction beyond 90 meters can be undertaken.
- 4) The permission to raise the dam height beyond 90 meters will be given by the Narmada Control Authority, from time to time, after it obtains the above-mentioned clearances from the Relief and Rehabilitation Sub-group and Environment Sub-group.
- 5) The reports of the Grievances Redressal Authorities, and of Madhya Pradesh in particular, shows that there is a considerable slackness in the work of the identification of land, acquisition of suitable land and the consequent steps necessary to be taken to rehabilitate the project oustees. We direct the States of Madhya Pradesh, Maharashtra and Gujarat to implement the Award and give relief and rehabilitation to the oustees in terms of the packages offered by them and these States shall comply with any direction in this regard which is given either by the NCA or the Review Committee or the Grievances Redressal Authorities.
- 6) Even though there has been substantial compliance with the conditions imposed under the environment clearance the NCA and the Environment Sub-group will continue to monitor and ensure that all steps are taken not only to protect but to restore and improve the environment.

7) The NCA within four weeks from today draw up an Action Plan in relation to further construction and the relief and rehabilitation work to be undertaken. Such an Action Plan will fix a time frame so as to ensure relief and rehabilitation *pari passu* with the increase in the height of the dam. Each State shall abide by the terms of the action plan so prepared by the NCA and in the event of any dispute or difficulty arising, representation may be made to the Review Committee. However each State shall be bound to comply with the directions of the NCA with regard to the acquisition of land for the purpose of relief and rehabilitation to the extent and within the period specified by the NCA.

8) The Review Committee shall meet whenever required to do so in the event of there being any unresolved dispute on an issue which is before the NCA. In any event the Review Committee shall meet at least once in three months so as to oversee the progress of construction of the dam and implementation of the R&R programmes.

If for any reason serious differences in implementation of the Award arise and the same cannot be resolved in the Review Committee, the Committee may refer the same to the Prime Minister whose decision, in respect thereof, shall be final and binding on all concerned.

9) The Grievances Redressal Authorities will be at liberty, in case the need arises, to issue appropriate directions to the respective States for due implementation of the R&R programmes and in case of non-implementation of its directions, the GRAs will be at liberty to approach the Review Committee for appropriate orders.

10) Every endeavour shall be made to see that the project is completed as expeditiously as possible.

This and connected petitions are disposed off in the aforesaid terms.

..... CJI

.....J.

[B.N. KIRPAL]

New Delhi
18 October 2000

Annex 2

Itinerary of the fact-finding team

- On 18 September 2002, visited Aggar resettlement colony in Gujarat, met with residents who had been displaced from Gaddher. FFT spoke on the telephone with Justice Majmudar of the SSP Gujarat GRA who directed us to get in touch with the NVDA.
- On 19 September 2002, met with residents of Jalsindi and neighboring villages in Jalsindi, observed the impacts of submergence, and visited a school organised by the tribal community.
- On 20 September 2002, met with residents of Dhomkedi and observed the impacts of submergence on homes and standing crops in Dhomkedi. FFT also observed the impacts of submergence on Sirsi village and the Hapeshwar temple, which suffered damage during submergence.
- On 21 September 2002, traveled in Nimad, visiting Hiladur, Ghelegaon, Chikhaldia, and Gopalpura resettlement sites; and held public meetings in Chikhaldia, Sirsi and Ekkalwara villages. In addition, those public hearings included residents from Chotabarda and Jetpur.
- On 22 September 2002, traveled to the Man dam submergence area, where we met with representatives from Jhiran, Khedi-Balwadi, Golpura, Gadhaghat, Badipura, Meenya Khedi, Guwadi, Rojya Baida, Jeerabad, Bhuwada Devipura, Khanpura Rehtiaon, Sanwi Khurd, and Sangwi Kala villages, viewed the impacts of submergence, and spoke with displaced people living in desperate conditions in 10x18 tin sheds.
- On 24 September 2002, traveled to Bhopal to meet with Mr. Pillai, SSP GRA Secretary for Madhya Pradesh, and with Mr. J.P. Vyas, Member Rehabilitation SSP, Narmada Valley Development Authority. □

Annex 3

Legal Basis for Housing Rights in International Human Rights Law

1. **The Universal Declaration of Human Rights (UDHR)** states in Article 25.1 that “Everyone has the right to an adequate standard of living adequate for the health and well-being of himself and his family, including food, clothing and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” .
2. **The International Covenant on Economic, Social and Cultural Rights (ICESCR)**. Accession by India on 10 April 1979. Article 11.1 of the ICESCR calls upon States Parties “ to recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognising to this effect the essential importance of international co-operation based on free consent.”
3. **The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**. Ratified by India on 3 December 1968. Article 5 (e) (iii) of CERD obliges States “ to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law, notably in the enjoyment of .. the right to housing.
4. **The Convention on the Rights of the Child (CRC)**. Accession by India on 11 December 1992. Article 16.1 of the CRC states that: “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, not to unlawful attacks on his or her honour and reputation.” Article 27.3 states that “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”
5. **The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**. Ratified by India on 9 July 1993. Article 14.2(h) states that: “States Parties shall undertake all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”
6. **Convention 107 of the International Labour Organisation** concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries. Ratified by India in 1958. Article 2(1), 12 (1) and 12(2) protect the land rights of tribal and indigenous populations.

Article 12 (1) states that “the populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations. Article 12(2). “When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees. “

7. **UN Commission on Human Rights resolution 1993/77 entitled ‘Forced Evictions’** affirms that the “Practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing.” The Commission recognises that the practice of forced evictions involves the involuntary removal of persons, families and groups from their homes and communities, resulting in increased levels of homelessness and in inadequate housing and living conditions”.
8. **General Comment No. 4 (1991) “The right to adequate housing” of the UN Committee on Economic, Social and Cultural Rights.** The Committee states that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity”(Para 7). Flowing from this holistic conception of the right to housing the Committee has outlined seven basic contents of the right to adequate housing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy (Para 8). In this General Comment the Committee also states that “forced evictions are, prima facie, incompatible with the requirements of the ICESCR and can only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law.” (Para 18).
9. **General Comment no. 7 (1997) on “forced evictions” of the UN Committee on Economic, Social and Cultural Rights,** which lays down procedural conditions that need to be satisfied prior to evictions taking place, states that in any case evictions should not “result in rendering individuals homeless or vulnerable to the violations of other human rights..... ”
10. **UN Comprehensive human rights guidelines on development-based displacement (1997)** has stated that all persons who have been evicted should have a right to compensation which should include land and access to common property resources and should not be restricted to cash payments.
11. **UN Commission on Human Rights resolution 2000/13 and 2001/34 entitled “Women’s equal ownership of, access to and control over land and the equal rights to own property and to adequate housing”** reaffirmed that “forced relocation and forced evictions from home and land have a disproportionately severe impact on women and encourages governments to ensure that women have equal treatment in land and agrarian reforms as well as in resettlement schemes and in ownership of property and in adequate housing.” □

Annex 4

Directions of the Court in Writ Petition (civil) no. 328 of 2002

In the Supreme Court of India Civil Original Jurisdiction

Narmada Bachao Andolan vs. Union of India and Ors. ..

Order

The Grievance Redressal Authority having been put in place, there is no reason for this Court to interfere.

As far as the dispute raised in this petition is concerned, that is over and final with the earlier decision of this Court. In case an oustee or a person affected by the Project has any grievance, it is open to him to approach the Grievance Redressal Authority.

It is also contended that land for land has not been given. If there is any person so aggrieved or has a justifiable grievance, it is open to that person to approach the Grievance Redressal Authority, failing with this Court.

It is made clear that full assistance will be rendered by the Narmada Control Authority as well as the State Governments to the Grievance Redressal Authority in the discharge of their respective functions.

This writ petition is disposed of in the presence of

..... CJI

.....J.

[K.G. BALAKRISHNAN]

.....J.

[ARIJIT PASAYAT]

New Delhi

9 September 2002

Annex 5

The findings and recommendations of the fact-finding team were sent to the Prime Minister of India on 22 November 2002. Copies were also sent to the following people.

- **Mr. L. K. Advani**, Deputy Prime Minister of India.
- **Mr. Narendra Modi**, Chief Minister of Gujarat.
- **Mr. Digvijay Singh**, Chief Minister of Madhya Pradesh.
- **Mr. Vilas Rao Deshmukh**, Chief Minister of Maharashtra.
- **Mr. R. Jeyasaleen**, Executive Member, Narmada Control Authority.
- **Mr. Gopal Reddy**, Chairperson R&R Sub-Group, Narmada Control Authority,
- **Mr. Jual Oram**, Minister for Tribal Affairs, Ministry of Tribal Affairs.
- **Mr. Arjun Charan Sethi**, Minister for Water Resources, Ministry of Water Resources.
- **Mr. T. R. Baalu**, Minister for Environment and Forest, Ministry of Environment and Forest.
- **Justice J. S. Verma**, Chairperson, National Human Rights Commission.
- **Mr. Juan Somavia**, Director General, International Labour Organisation.
- **Mr. Sergio Vieira de Mello**, United Nations High Commissioner for Human Rights.
- **Mr. Jaap Doek**, Chairperson, Committee on the Rights of the Child.
- **Ms. Virginia Bonoan Dandan**, Chairperson, Committee on Economic, Social and Cultural Rights.
- **Ms. Ayse Feride Acar**, Chairperson, Committee on the Elimination of Discrimination against Women.
- **Mr. Miloon Kothari**, Special Rapporteur on Adequate Housing, UN Commission on Human Rights.
- **Mr Rodolfo Stavenhagen**, Special Rapporteur on Human Rights and Fundamental Freedoms of Indigenous People, UN Commission on Human Rights.

Annex 6

Housing and Land Rights Network
HABITAT INTERNATIONAL COALITION



To,

C. Gopal Reddy,
Chairman, R&R Sub-Group of NCA,
Secretary, Ministry of Social Justice and Empowerment,
Shastri Bhavan,
New Delhi

8 March 2003

Subject: Status of Rehabilitation of the Oustees of the Sardar Sarovar Project

Dear Mr. Gopal Reddy,

On behalf of the Housing and Land Rights Network of Habitat International Coalition (HLRN-HIC), I would like to thank you for meeting us on 11 December 2002. The meeting gave us an opportunity to put forth our concerns regarding the rehabilitation of the oustees of the Sardar Sarovar Project.

On the basis of the HLRN-HIC fact-finding in September 2002, I reiterate that the height of the dam should not be raised beyond 95 m (current height), as the oustees at this dam height have not been fully rehabilitated and resettled in accordance with the NWDT Award.

At the meeting you had agreed to send us information on the issues we raised, after discussion in the R & R Sub-Group and with the State governments. I am sending you a list of the issues we had raised in our meeting. We would appreciate a response.

1. The Action Taken Report of Madhya Pradesh government claims that the people of Chikhaldia in Dhar district have been resettled, whereas when the HLRN-HIC fact-finding team had found that this was not correct.
2. The designated Chikhaldia rehabilitation site is likely to come under submergence. The authorities had asked the oustees of Chikhaldia to move to Gehalgoan temporarily. What is the current situation of the Chikhaldia oustees?
3. The Gehalgoan and Gopalpura rehabilitation sites were not ready for habitation.
4. Why was the Madhya Pradesh government allowed to differentiate between temporary and permanent submergence; in violation of the provisions of the NWDT Award?

5. What are the implications of the findings of the Task Force set up by the Maharashtra government?
6. Has R& R Sub-Group discussed with the Maharashtra government the measures required for resettling and rehabilitating the large number of people identified at 95 m dam height, by the Task Force, as yet to be rehabilitated?
7. The Maharashtra Grievance Redressal Authority had expressed reservation on the resettlement of project affected people up to 90-95ms the of the dam, why was the height of the dam then raised to 95m ?
8. What is the position of the R&R Sub-Group regarding ex-parte allotment of land and house-plots to the oustees?

As you had requested, I am enclosing the affidavit of the Maharashtra government to the Supreme Court in May 2002 and the Interim Report of the Maharashtra GRA to the Supreme Court in June 2002, along with a copy of the main findings of the HLRN-HIC visit to the valley in September 2002.

Lastly, we request the R&R Sub-Group to visit the submergence areas and the rehabilitation sites for first hand information on the status of rehabilitation and resettlement of the oustees. HLRN-HIC is willing to accompany the R&R Sub-Group to the valley to verify it's findings.

We look forward to hearing from you in response to our concerns.

Yours sincerely,

Shivani Bhardwaj
Associate Coordinator
South Asia Regional Program
HLRN-HIC

HIC-HLRN Publications

Fact-finding Reports

Impact of War and Forced Evictions on Urbanization in Turkey

Violations of Housing Rights

Fact-finding Report no. 1 (1996)

HABITAT INTERNATIONAL COALITION (HIC)

In Quest of Bhabrekar Nagar

A report to enquire into demolitions in Mumbai, INDIA

Fact-finding Report no. 2 (1997)

HABITAT INTERNATIONAL COALITION (HIC)

Fact-finding Mission to Kenya on the Right to Adequate Housing

A report on slum conditions, evictions and landlessness

Fact-finding Report no. 3 (2001)

HIC-HLRN, SUB-SAHARAN REGIONAL PROGRAMME¹

Resettlement on Land of Bhutanese Refugees

A report on new threats to repatriation

Fact-finding Report no. 4 (2002)

HIC-HLRN, SOUTH ASIA REGIONAL PROGRAMME (SARP)

Restructuring New Delhi's Urban Habitat: Building an Apartheid City?

A report on the resettlement process of Delhi, INDIA

Fact-finding Report no. 5 (2002)

HIC-HLRN, SOUTH ASIA REGIONAL PROGRAMME (SARP)²

Rebuilding from the Ruins: Listening to the Voices from Gujarat and Restoring People's Rights to Housing, Livelihood and Life

A report on ethnic conflict in Gujarat, INDIA

Fact-finding Report no. 6 (2002)

HIC-HLRN, SOUTH ASIA REGIONAL PROGRAMME (SARP);

YOUTH FOR UNITY FOR VOLUNTARY ACTION (YUVA)³

The Impact of the 2002 Submergence on Housing and Land Rights in the Narmada Valley: Report of a Fact-finding Mission to Sardar Sarovar and Man Dam Projects

A report on housing and land rights violations and inadequate rehabilitation

Fact-finding Report no. 7 (2003)

HIC-HLRN, SOUTH ASIA REGIONAL PROGRAMME (SARP)

Research Reports and Training Manuals

Trade, Investment, Finance and Human Rights

Essential Documents

INTERNATIONAL NGO COMMITTEE ON HUMAN RIGHTS IN TRADE AND INVESTMENT (INCHRITI)

Children and Right to Adequate Housing:

A Guide to International Legal Resources

Research Report and Training Manual (2002)

HIC-HLRN, SOUTH ASIA REGIONAL PROGRAMME (SARP) AND

CENTRE FOR CHILD RIGHTS (HAQ)

Dispossessed: Land and Housing Rights in Tibet

Research Report (2002)

TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY (TCHRD)⁴

¹ In collaboration with Human Rights Monitoring Group (HURIMOG)

² In cooperation with Sajha Manch, New Delhi.

³ Mission conducted at the request of Citizen's Initiative, Ahmedabad.

⁴ In collaboration with HIC-HLRN.

Community Action Planning: Processes – Ideas – Experiences

Manual for human rights based slum upgradation (2002)
HIC-HLRN, SOUTH ASIA REGIONAL PROGRAMME (SARP); YUVA; PDHRE

Housing and Land Rights of Nomadic Communities

A research report on Nomadic communities in Rajasthan, INDIA
(forthcoming publication)
HIC-HLRN, SOUTH ASIA REGIONAL PROGRAMME (SARP); AND MUKTIDHARA

Methodology for Monitoring the Human Right to Adequate Housing: The “Tool Kit”

Indicator and benchmarks to assess realization and violations of the Right to Adequate Housing (forthcoming publication)
HIC-HLRN

Urgent Action: HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing

Training Manual
HIC-HLRN, MIDDLE EAST/NORTH AFRICA (MENA) REGIONAL PROGRAMME

Reports to UN Bodies

Child in Search of the State

Parallel report to the India country report on the implementation of the Right to Housing as enshrined in the Convention on the Rights of the Child (1998)
HABITAT INTERNATIONAL COALITION (HIC); LAYA, HUMAN RIGHTS FOUNDATION (HRF) AND YOUTH UNITY FOR VOLUNTARY ACTION (YUVA)

Composite of Economic, Social and Cultural Rights Conditions of the Indigenous Palestinian People under Israel’s Jurisdiction and Control

Joint parallel report to the UN Committee on Economic, Social and Cultural Rights (2001)
HIC-HLRN, MIDDLE EAST/NORTH AFRICA (MENA) REGIONAL PROGRAMME WITH SEVEN OTHER PALESTINIAN, ISRAELI AND INTERNATIONAL NGOS⁵

Implementation of the International Convention on the Rights of the Child: Israel Issues affecting the Indigenous Palestinian People under the State of Israel’s Jurisdiction and Control

Joint parallel report to the UN Committee on the Rights of the Child (2002)
HIC-HLRN, MIDDLE EAST/NORTH AFRICA (MENA) REGIONAL PROGRAMME WITH THREE OTHER PALESTINIAN NGOS⁶

Human Right to Adequate Housing in India

Joint parallel report to the UN Committee on Economic, Social and Cultural Rights (2002)
HIC-HLRN, SOUTH ASIA REGIONAL PROGRAMME (SARP) WITH INDIAN NGOS⁷.

⁵ Adalah, the Legal Center for Arab Minority Rights in Israel; Association of Forty (Israel); Badil Resource Center for Palestinian Residence and Refugee Rights (Bethlehem); Boston University Civil Litigation Program (USA); LAW Society for the Protection of Human Rights and the Environment (Jerusalem); Palestinian Center for Human Rights (Gaza); World Organization against Torture (Geneva, Switzerland)

⁶ Defence for Children International/Palestine; LAW Society for the Protection of Human Rights (Jerusalem) and Al Mezan Center for Human Rights (Gaza, Palestine).

⁷ National Forum for Forest People and Forest Workers, Muktidhara, YUVA, Sajha Manch, Narmada Bachao Andolan and Kalpavriksh.

BLANK

The Impact of the 2002 Submergence on Housing and Land Rights in the Narmada Valley

Report of a Fact-finding Mission to
Sardar Sarovar and Man Dam Projects



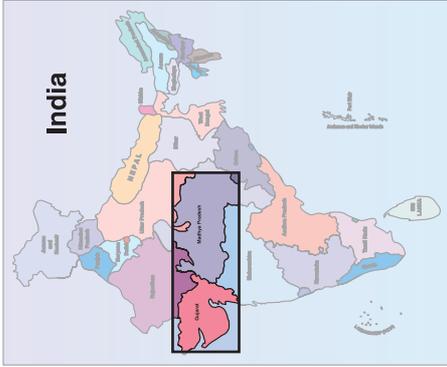
South Asia Regional Programme
Housing and Land Rights Network
HABITAT INTERNATIONAL COALITION

Contents

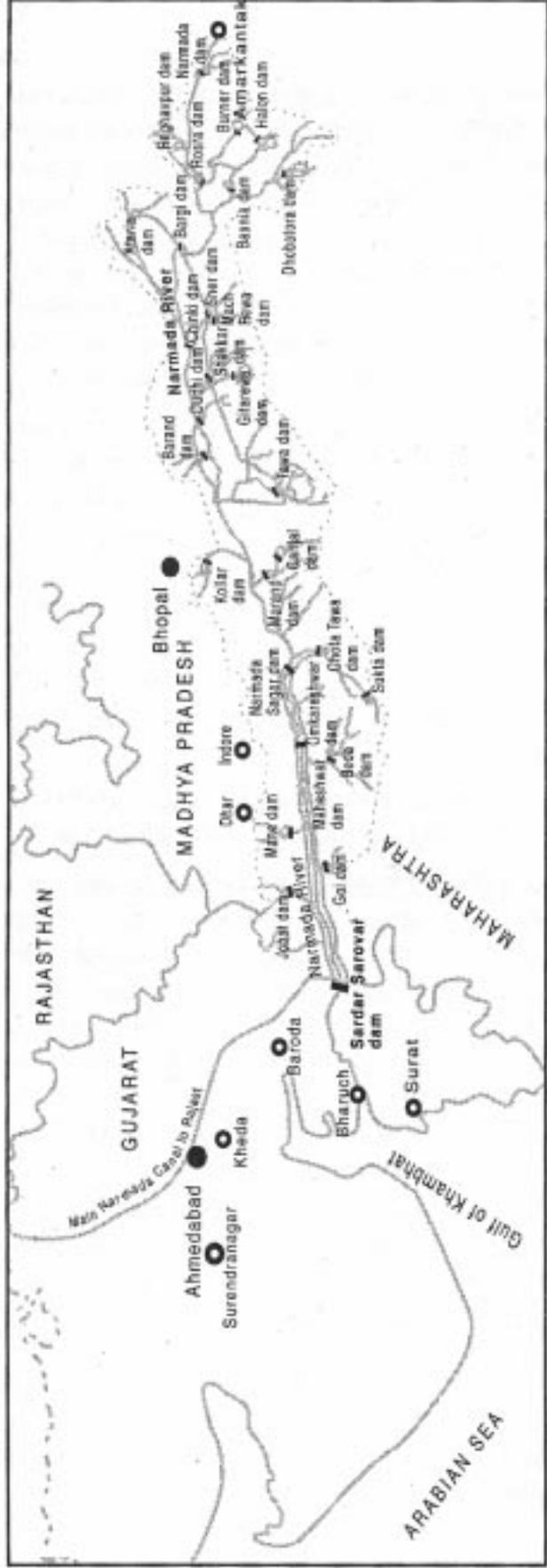
Abbreviations

Executive Summary	1
I Introduction	4
Framework for the Human Right to Adequate Housing under International Human Rights Law	5
Involuntary Resettlement Policies of the World Bank	7
II Sardar Sarovar Project	8
Background	8
Findings	10
1. Submergence during the Monsoons Results in Food Scarcity	10
2. Situation at the Rehabilitation Sites Found Inadequate	13
A. Gujarat	13
B. Madhya Pradesh	14
3. Problems with Land Rights in Tribal Areas	16
4. <i>Ex-Parte</i> Rehabilitation Violates State Policies and International Standards	17
5. Differentiating between Temporary and Permanent Submergence to Reduce Numbers of People to be Rehabilitated	19
6. Lack of Information about Displacement and Rehabilitation	20
7. Weaknesses of the Grievance Redressal Authority	22
8. Raising the Dam without Due Process	24
9. Failure to Improve or Restore Standards of Living	24
III The Man Dam Irrigation Project	26
Background	26
Findings	27
1. Violence Used to Evict People from Their Homes	27
2. People Rendered Homeless and Facing Risk of Starvation Due to Flooding	30
3. Inappropriate Use of Cash Compensation and Denial of Rehabilitation Entitlements to the Affected People	30
4. Weaknesses of the Grievance Redressal Mechanism	32

IV Recommendations	33
Recommendations	33
1. Sardar Sarovar Project	33
2. Man Irrigation Project	36
3. General Recommendations to the Prime Minister	38
4. Recommendations to the United Nations Human Rights Mechanisms	39
5. Recommendations to the World Bank	40
Annex 1 to 6	41



Narmada Valley and the proposed large dams



Source: The River and Life, published by Earthcare Books

**HABITAT INTERNATIONAL COALITION (HIC)
Housing and Land Rights Network (HLRN)**

HLRN Coordination Office

Middle East/North Africa (MENA)

7 Muhammad Shafiq Street, No 8 Muhandisin, Giza, EGYPT

Tel: +20 (0)2 347-4360, Fax: +20 (0)2 338-9482

E-mail: hic-mena@hic-mena.org, Website: www.hic-mena.org

South Asia Regional Programme (SARP)

B-28 Nizamuddin East, New Delhi – 110013, INDIA

Tel./Fax: +91 (0)11 2435-8492, E-mail: hichlrc@vsnl.com

Latin America Regional Coordination Office (HIC-AL)

Tacuba no 53, 1er piso, Colonia Centro, 06000 México, D.F., MÉXICO

Tel: +52 (0)55 12 15 86, Fax: +52 (0)55 12 38 42

E-mail: chm@laneta.apc.org, Website: www.laneta.apc.org/hic-al

Sub-Saharan Regional Programme

P.O.Box no 14550, Nairobi, KENYA

Tel: +254 (0)2 443-226/443-229/443-219, Fax: +254 (0)2 444-643

E-mail: mazinst@mitsuminet.com, Website: www.mazinst.org

UN Liaison Office

8, rue Gustave Moynier, 1202 Geneva, SWITZERLAND

Tel./Fax: +41 (0)22 738-8167, E-mail: hic-hrc@iprolink.ch

© Copyright 2003

Authors : Dana Clark and Shivani Bhardwaj
**Contributing author,
editor and legal consultant** : Seema Misra
Contributing reviewers : Joseph Schechla and Miloon Kothari
Photography : Dana Clark

Publisher : Housing and Land Rights Network
HABITAT INTERNATIONAL COALITION

Design and printing : Systems Vision, New Delhi, India

FRONT INSIDE COVER

Abbreviations

CRC	Convention on the Rights of the Child
FFT	fact-finding team
FIR	First Information Report
GRA	Grievance Redressal Authority
HIC	Habitat International Coalition
HLRN	Housing and Land Rights Network
ICCPR	International Covenant on Civil and Political Rights
ICDS	Integrated Child Development Scheme
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
NBA	Narmada Bachao Andolan
NCA	Narmada Control Authority
NHRC	National Human Rights Commission
NVDA	Narmada Valley Development Authority
NWDT Award	Narmada Water Disputes Tribunal Award
PAF	project affected family
R & R Sub-Group	Rehabilitation and Resettlement Sub-Group of the Narmada Control Authority
SC/ST	Schedule Caste / Schedule Tribes
SSP	Sardar Sarovar Project

BACK INSIDE COVER