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Carole Brookins, Executive Director
The World Bank
1818 H Street, NW
Washington, DC 20433

Dear Ms. Brookins:

I am writing to call your attention to the current situation in the Narmada Valley and to share with you a report published by Habitat International Coalition, a Delhi-based organization that evaluated *The Impact of the 2002 Submergence on Housing and Land Rights in the Narmada Valley*. I served as a member of an HIC fact-finding team that traveled through the Narmada Valley in September 2002 to evaluate the impacts of last year's monsoon flooding on villages affected by the Sardar Sarovar and Man dams.

The HIC fact-finding trip found that thousands of people who should have been fully rehabilitated six months prior to increasing the dam height to 95 meters last year still lacked resettlement and rehabilitation (R&R), despite the fact that many of these people are officially listed as "rehabilitated." There are severe implementation failures relating to resettlement and rehabilitation. Nonetheless, last month the Narmada Control Authority gave clearance to raise the Sardar Sarovar dam height again, to 100 meters (plus 3 meter humps, bringing the total to 103 meters). Submergence at this level will cause the arbitrary displacement of tens of thousands of people, and will represent a continued erosion of human and environmental rights and the rule of law.

I hope that in light of this alarming news you will take the time to read this letter and the enclosed report. The 2003 monsoon rains have just begun. What will happen to all of the people documented in the HIC-HLRN report that have not received rehabilitation at 95 meters, plus an additional 3,000 families that will be affected this year by raising the dam height to 103 meters? Their impending displacement is a prima facie violation of the policies, which require that people facing submergence should have been fully and effectively resettled and rehabilitated six months prior to the monsoon floods that threaten them. The report shows that:

- Resettlement sites that should have been available prior to the 2002 increase in the dam height to 95 meters were found to be uninhabited and of poor quality, lacking agricultural land, lacking water and basic amenities, not ready to house people, and in some instances subject to submergence as the dam height goes up.[i]

- There is a lack of available land and as a result state governments are emphasizing cash payments instead of land-for-land, in violation of relevant policies. Given that land is already scarce, there is no guarantee that current or future evictees will receive the land-for-land benefits to which they are entitled.

- In addition, the report documents institutional failures, including grievance redress mechanisms that lack basic resources and infrastructure to independently investigate grievances or ensure implementation of their decisions. The GRA for Madhya Pradesh confirmed that there had been no field visits since the year 2000.

- Policy requirements regarding the improvement in the standard of living of displaced persons, and the restoration of their livelihood and resource base have been violated in all three states - Madhya Pradesh, Maharashtra, and Gujarat.

The monsoon rains are starting now, and there is no effective rehabilitation. There is nowhere for people facing submergence to go. The resettlement colonies are not prepared. There is not enough arable land available even to replace that which has already been submerged. There is not an accurate and comprehensive survey of the numbers of people to be displaced or of their assets, including land that they own or utilize, nor is there a comprehensive and realistic resettlement plan.

<u>What's This Got to Do With the World Bank?</u>
I am writing to you to initiate a discussion about the responsibilities of the World Bank in the context of Sardar Sarovar, and particularly what role the Board should play in dealing with lapses of accountability in this case. India's cancellation of the remaining balance of the World Bank loan in 1993 did not affect the binding nature of the commitments that it entered into for the amount that it had already borrowed to finance the project. In response to questions raised during a Board discussion of the cancellation of the project, the World Bank's General Counsel clarified that the government of India continues to be "legally obligated towards the Bank to carry out its obligations under the loan agreement."[ii]

The Sardar Sarovar loan has not been repaid, and the project is still subject to the World Bank's policy requirements and loan conditions. Throughout the life of a loan, the World has an ongoing supervision and monitoring role, and an obligation to ensure that Bank-financed projects are meeting project objectives, the terms of the loan agreement, and applicable policies and procedures. In the case of Narmada, the Bank has largely failed to exercise its supervision and monitoring obligations. The Board should call on Management to report to the Board on the content of its supervision and monitoring of the Sardar Sarovar project, including the present status of dam construction, resettlement and rehabilitation, and whether the project has received the proper environmental clearances.

In addition, the World Bank must require and assist the borrowers to bring the project into compliance with the terms of the resettlement policy,[iii] the tribal peoples policy,[iv] the credit and loan agreements signed by the World Bank and the government of India and the three state governments, and the terms of National Water Disputes Tribunal Award (which is incorporated by reference in the loan and credit agreements). The Bank must ensure that involuntary resettlement is avoided and minimized, that local people's rights are respected, that an adequate and comprehensive resettlement and rehabilitation plan is in place and is being properly implemented (and here it is important to caution about the disparity between words on paper and the reality on the ground), it must ensure that people who have been displaced receive assistance to regain and improve their standard of living, and, according to the specific terms of the Sardar Sarovar project, it must ensure that all people who face the risk of submergence must be moved, resettled, and fully rehabilitated at least six months before the monsoon that threatens them with submergence.

The government of India and the states of Gujarat, Maharashtra, and Madhya Pradesh have failed to live up to their commitments under the World Bank's loan and credit agreements, including the requirement that "all oustees, including those described as landless, be enabled as a result of resettlement and rehabilitation measures taken on their behalf, to 'improve, or at least regain the standard of living they were enjoying prior to their displacement.'"[v] The Bank has a legal and moral obligation to ensure that its contract terms are respected, and that the rights of local affected people are respected, consistent with the requirements of the Bank's policies. The enclosed report makes clear that these requirements have been and continue to be violated.

<u>The Accountability Gap</u>

Projects such as Sardar Sarovar, where the loan has been disbursed by the Bank, but has not yet been repaid by the Borrower, lack public accountability at the World Bank. Projects that are more than 95% disbursed are not actionable through the Inspection Panel. This cut-off of access to accountability after funds are paid out by the Bank is particularly a problem in projects that involve involuntary resettlement, where displacement often happens years after loan approval and the problems become manifest after the money is already disbursed. Although the Sardar Sarovar project is still subject to the Bank's loan conditions and the policies that were in effect when the projects were designed, local people have no official recourse for redress of violations.

All around the world, people are affected by projects which should be in compliance with World Bank standards but which are not. The Sardar Sarovar Project is among the most-studied and controversial of these projects, and the lessons from the struggle in the Narmada Valley have resonated loudly in development discourse, with institutional ripple effects including the creation of the Inspection Panel and the convening of the World Commission on Dams.[vi]

From the beginning, the people in the Narmada Valley have held the World Bank responsible for promoting a project of enormous magnitude without properly evaluating the environmental and social impacts, and for failing to ensure that those impacts were avoided, minimized, and mitigated as required by Bank policies. Accurate information about impacts and a realistic resettlement and rehabilitation plan are part of the core requirements of World Bank policies.[vii]

In fact, at the time that the Board gave its approval for Sardar Sarovar, the project was already in violation of the Bank's environmental and social policies. Although the resettlement policy has been on the books since 1980, the Morse Commission independent review of Sardar Sarovar found that:

> In 1985, when the credit and loan agreements were signed between the Bank and the three states, no one knew the scale of the displacement that would result from the Sardar Sarovar Projects, nor did anyone have anything like a true picture of the peoples who would be

> displaced, nor had the people themselves been consulted. . . . no basis for designing, implementing, and assessing resettlement and rehabilitation was in place. . . . Nor were there benchmark data with which to assess success or failure. As a result, there was no adequate resettlement plan, with the result that ***human costs could not be included as part of the equation***. Policies to mitigate those costs could not be designed in accord with people's actual needs.[viii]

Those who are displaced should be given a permanent and viable alternative to their lost lands and livelihoods. There is documentary evidence that resettlement and rehabilitation (R&R) activities in Sardar Sarovar have not kept pace with the law and policy requirements. The scale of displacement and the difficulty of locating replacement land expands exponentially with each increase in the dam height.

Now the Narmada Control Authority has agreed to another increase in the dam height despite clear illegalities and failures relating to R&R. Demanding respect for the rule of law and the rights of adivasis and other local people, affected communities and their supporters are calling for a moratorium on any increase in the height of the Sardar Sarovar dam, in order to prevent further arbitrary displacement until the project is reviewed and brought into compliance with all applicable policies, including those of the World Bank.

What is the appropriate role for the World Bank in this situation? That is a complex question. Many people of the Valley consider it a victory that the Bank was forced to withdraw from this flawed project, and would not welcome the Bank back into an active role in the project. On the other hand, they also hold the Bank responsible for its role in promoting the project in violation of its own policies.

The recent decision to raise the height of the dam must immediately catalyze the Bank to engage the Indian government and the three state governments on the need to abstain from raising the dam until all currently affected people are fully rehabilitated and there is a realistic assessment of the cumulative impacts of displacement, including a comprehensive plan for providing alternative lands and livelihoods. There are a variety of remedies available to the Bank to enforce the terms of the loan conditions, and the institutional relationship between Bank and borrowers (including ongoing and new lending relationships) provides those parties with a context for interaction about the status of projects at various stages of design and implementation. In addition, the Bank has leverage with the three state governments through ongoing irrigation and power sector loans.[ix]

<u>The Board Role and Responsibility</u>

The lack of institutional recourse available to local affected people arguably puts an additional duty of care on the Board of Executive Directors, which gave its approval to this flawed project. When, as in this case, Management fails to effectively supervise and monitor a project and ensure its compliance with the loan and credit agreements and with the fundamental principles of World Bank policies, and there are clear implementation and accountability gaps, then the Board has a fiduciary responsibility to take action to uphold the integrity of the policies and address those gaps.[x]

Management has all too often abdicated its responsibility to ensure that projects that it sends to the Board for approval are in compliance with Bank policies. The Board, all too often, in turn gives approval to projects that are in violation of World Bank policies.[xi] Board approval in 1985 of a project that fundamentally violated the rights of local people and the World Bank's own policy requirements was arguably a breach by the Board of its fiduciary obligations to engage in informed and rational decision-making and to exercise due diligence to ensure that Bank activities are consistent with the Bank's operating policies and procedures. That same fiduciary relationship provides an opportunity for the current Board to assess the following question: Given that the Board and Management chose to proceed with a project that failed to deal with the human costs of widespread displacement, in violation of the Bank's policies, what obligation does the Bank have to the people who were affected by those institutional decisions?

This is, in some ways, a core test of the legitimacy of the institution – the outside world sees violated policies and bankrupted lives as a result of World Bank financing. The Bank has turned a blind eye to legacy issues, ignoring the people who are suffering from failed resettlement and other policy implementation problems, while proclaiming that it now does development better than ever. Since Bank Management is unconcerned with, or wary of addressing, legacy issues, it is time for the Board to address the accountability gap at the World Bank and tackle the problems of implementation failures – failures which can often be linked back to faulty design work done at the pre-approval stage.

How best to tackle the legacy issues? How to assist borrowers in bringing projects into compliance with Bank policies? How to provide reparations to people who have been suffering from failed, unsustainable development? How to compensate communities that have lost years of productivity? How to provide sustainable livelihoods to displaced communities? How to empower displaced persons in determining their own development priorities?

<u>Dealing With Problems: The Development Effectiveness Remedial Team</u>

One proposal would be to appoint a committee to report to the Board, not just about the *problems* associated with Sardar Sarovar but also the means of *resolving* the existing problems and identifying the steps that need to be implemented (not just a checklist of promises) in order to bring the project into compliance with the terms of the deal. This is an issue that the Board of Executive Directors has both a right and a responsibility to address. The Bank's Articles of Agreement provide that "The Executive Directors may appoint such committees as they deem advisable. Membership of such committees need not be limited to governors or directors or their alternates."[xii]

Remedial measures could be designed and supervised by an independent Development Effectiveness Remedial Team (DERT).[xiii] The DERT should include experts from outside the World Bank Group and should have community representatives, including people who have directly experienced development-induced displacement. The DERT should report to the Board, and be independent of Management. Reports of the DERT should be made publicly available – in the project area, on the web, and through the Bank's InfoShop.

The objective of the team would be to improve the development effectiveness of the Sardar Sarovar projects, develop and oversee the implementation of appropriate remedial measures worked out in consultation with local affected people, their designated representatives, and other stakeholders. It would work to ensure that the project was brought into compliance with the Bank's policies, and foster greater understanding of and respect for those policies by Bank staff and borrowers. The DERT could help the Bank address its own apparent lack of capacity in providing proper guidance and institutional support to the resettlement components of projects with which it is involved.

Activities of the DERT could be financed out of the Bank's net income, which in fiscal year 2002 was $2.78 billion.[xiv] Local people have long borne the brunt of the costs noncompliance, including hardship, hunger, drowning, lost lands, lost livestock, lost livelihoods, arrest and imprisonment, homelessness, beatings, and other violations of their rights. The costs of assessing and implementing lagging R&R provisions and in conducting needed environmental and baseline socio-economic studies for Sardar Sarovar should be recognized as a cost of the failure to ensure that the project was designed in accordance with Bank policies or to provide effective supervision to date.

This will be a learning process for all involved, and should be undertaken only after careful evaluation and consultation. It will require the trust and approval of the local affected people. In the context of Sardar Sarovar, remedial steps should include a moratorium on further displacement while the resettlement, rehabilitation, and environmental aspects of the project are brought into compliance with the World Bank's policies, the loan agreement, the NWDT Award, and other applicable policies.

Opportunity to Embrace the Poverty Alleviation Mandate
Identifying policy violations and harm, which was done more than ten years ago by the Morse Commission, is only one part of the picture of accountability. The enclosed Habitat International Coalition report shows that even to this day, people are being subjected to arbitrary displacement in violation of international human rights law, World Bank policies, and the requirements of national and state laws and policies.

The next step in the process of accountability is dealing with the findings, dealing with the reality of policy violations, creating effective remedies in consultation with affected people, and strengthening the focus on project and policy implementation and accomplishment of the actual objectives of the social and environmental policies throughout the lifetime of Bank projects.

Thank you for taking the time to read this letter. I hope that you will take action to ensure that the World Bank moves forward to proactively address the problems in Sardar Sarovar and to ensure that the peoples' rights under the World Bank policies and loan agreements are upheld. Please let me know if you have any questions or comments on the issues raised in this letter. I hope that you will also take the time to read the enclosed report.

Sincerely,

Dana Clark
p.s. additional information about the situation in the Narmada Valley, including links to other resources, is available at www.narmada.org.

[i] In some cases, displaced persons are being asked to resettle on lands that are subject to submergence. Each increase in the reservoir, each wave of displacement makes arable land all the more scarce.
[ii] See 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.'"
[iii] OMS 2.33, Social Issues Associated with Involuntary Resettlement in Bank-Financed Projects (1980). The Morse Commission found numerous violations of this policy, and the policy continues to be violated to this day. Paragraph 18 provides that "the major objective is to ensure that the 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. Among major factors bearing on the successful achievement of this objective is the choice of the new area, which should, so far as possible, be one in which the existing skills and aptitudes of the involuntary resettlers can be readily employed." Paragraph 27 says that "Bank supervision missions should pay careful attention to the sociological and technical aspects of resettlement as a whole. Project management should monitor, with Bank assistance if required, the timely completion of resettlement activities, and the general social and economic conditions of the resettled people."
[iv] OMS 2.34, Tribal People in Bank-Financed Projects (1982). Paragraph 5 states that "In those cases where environmental and/or social changes promoted through development projects may create undesired effects for tribal people, the project should be designed so as to prevent or mitigate such effects. 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 people." Paragraph 13 reads "In view of the special needs of the tribal people and the need to monitor progress by the relevant government agency, the supervision of this component may extend over a longer period of time than the supervision of other components. To accommodate these needs, a specific monitoring and evaluation system may be necessary."
[v] Bradford Morse and Thomas R. Berger, letter to Lewis T. Preston, President (June 18, 1992), p. xviii: "Central to the Bank's credit and loan agreements with India and the three states is the objective requiring that *all* oustees, including those described as landless, be enabled as a result of resettlement and rehabilitation measures taken on their behalf, to "*improve or at least regain* the standard of living they were enjoying prior to their displacement."
[vi] In 1992, the Morse Commission documented the severe human rights and environmental consequences of the Bank's failures to enforce the terms of its policies and to ensure that the loan and credit agreements were properly adhered to. Shortly thereafter, the Government of India cancelled the remaining balance on the loan, and the Bank withdrew from the project. See Sardar Sarovar, Report of the Independent Review (1992).
[vii] The World Bank has never bothered to compile or report accurate information about the number of people displaced by projects that it finances each year, or whether those people have been fully rehabilitated in accordance with the policy; this kind of information should be required under Bank policy, should be monitored, and should be summarized by the Bank in its annual report.
[viii] Sardar Sarovar, Report of the Independent Review (1992) at xv-xvi (emphasis added). The Morse Commission was the first independent review of a World Bank project. Every Executive Director should request a copy of the Report of the Independent Review.
[ix] See letter from Edwin Lim, World Bank to Medha Patkar, Narmada Bachao Andolan, March 7, 2002. "Through our engagements in different sectors, including in the states of Gujarat, Madhya Pradesh and Maharashtra we continue to work to strengthen Government's and other agencies capacity to address social and environmental impacts of development projects."
[x] In this case, the Country Director, Edwin Lim, has failed to effectively respond to the situation in Sardar Sarovar despite correspondence from the Narmada Bachao Andolan; indeed, the Bank appears to have ceased any effective supervision and monitoring of the project. *See* letter from Medha Patkar to Edwin Lim (6 February 2002); letter from Medha Patkar to Edwin Lim (5 April 2002) ("I was amazed to find that there is no clear statement on and commitment to the World Bank's role in monitoring of the Project to ensure that the agreement signed in 1985, which is still legally binding, is complied with.")
[xi] Sardar Sarovar is not the only example. More recently, in her statement at the July 2000 Board meeting that rejected Management and China's plan to proceed with the China Western Poverty Reduction Project, U.S. Executive Director Jan Piercy noted the perverse situation that: "A project that was clearly non-compliant with basic Bank policies was brought to the Board despite enormous effort by Board members to persuade Bank Management

to step back and reassess. Bank staff has no consistent understanding of basic policies that have been in place for years." Jan Piercy, "Qinghai Component of Western China Poverty Reduction Project: Inspection Panel Report and Management Response," Statement of U.S. Executive Director to the World Bank, July 6, 2000.

[xii] Article V, Section 4(i).

[xiii] For more elaboration on this idea, please see an article by Dana Clark, "The World Bank and Human Rights: The Need for Greater Accountability," Harvard Human Rights Journal, Vol. 15, 205-226 (Spring 2002), available electronically at http://www.law.harvard.edu/studorgs/hrj/iss15/clark.shtml (last visited May 13, 2003).

[xiv] World Bank, Annual Report 2002: International Bank for Reconstruction and Development—Statement of Income 41 (June 30, 2002), *available at* http://www.worldbank.org/annualreport/2002/pdf/IntReconstruction.pdf (last visited May 13, 2003). In Fiscal Year 2001, IBRD had a net income of $1.49 billion; for Fiscal Year 2000, net income was $1.99 billion. *Id.* In years past, the Board of Governors has approved the use of funds for things such as the "Trust Fund for East Timor" or "Capacity Building in Africa," so the use of such funding for capacity building and poverty alleviation is not unprecedented. The DERT should also research and recommend other longer-term ways to build in financing of remedial measures, and to fund the capacity building and support needed for the Bank and for borrowers, such as performance bonds, and/or structuring project agreements to ensure that a certain percentage of returns on the primary investment is permanently targeted to environmental and social mitigation.