

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. □