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Your Excellency,

We are collectively addressing this letter to your Excellency in our capacity as United Nations Special Rapporteurs concerned with the question of various human rights. Specifically, our mandates include the question of adequate housing as a component of the right to an adequate standard of living (appointed pursuant to Commission Resolution 2000/9), the human rights and fundamental freedoms of indigenous people (appointed pursuant to Commission Resolution 2001/57), and the right to the highest attainable standard of health (appointed pursuant to Commission Resolution 2002/31).

Our respective mandates include monitoring both violations of and the steps taken to realize the human rights that we have been entrusted to promote and protect. Our work entails the gathering, requesting, receiving and exchange of information and communications from relevant sources with respect to violations of human rights and fundamental freedoms, as well as the formulation of recommendations and proposals on appropriate measures and activities to prevent and remedy such violations.

Furthermore, each of us is given a directive to work in close relationship with other United Nations special rapporteurs, special representatives, experts and working groups. We thus make this collective appeal, gravely concerned that the matter at issue has the potential for negative impact on each of the rights within our purview, and thus raises shared concerns.

We have recently received an urgent communication from reliable sources that is of grave concern. Specifically, the communications reveal that a decision was made by the Resettlement

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His Excellency
Mr. Shri Atal Bihari Vajpayee
Prime Minister
Government of India

and Rehabilitation (R&R) subgroup of the Narmada Control Authority (NCA), and supported by the various State Chief Ministers and relevant authorities, to allow the raising of the height of the Sardar Sarovar dam from 95 meters to 100 meters. This decision has now been implemented and continued construction of the dam is underway.

According to the information received, on 14 May 2003, the Narmada Control Authority (an Indian inter-state committee) has approved the decision to increase the water level in the Sardar Sarovar Dam on the Narmada River from 95 meters to 100 meters. This approval will result in the enlargement of the area covered by the water and thereby increase the number of dwellings that will be submerged during the monsoon season, resulting in flooding several Adivasi communities living near the reservoir.

According to the information received, around 3,000 families in Maharashtra and around 12,000 families in Madhya Pradesh will be in danger of having their homes submerged as a result of the heightened water level, even though no proper resettlement has been given or planned for them.

As you are aware, on 18 October 2000, the Supreme Court directed that the construction of the dam was to continue in consonance with the Narmada Tribunal Award. The further raising of the height of the dam was expressly linked to the implementation of the relief and rehabilitation measures *and* to clearance by the Relief and Rehabilitation Subgroup. Even in 1991, the Supreme Court had directed that “rehabilitation should be so done that at least 6 months before the area is likely to be submerged, rehabilitation should be complete and should be in respect of homestead substitution of agricultural property and such other arrangements which are contemplated under the rehabilitation scheme”. As such, the decision of the NCA appears to be in clear violation of these orders of the Supreme Court of India.

Additionally, this recent decision to raise the dam height indicates violations of several human rights contained in international human rights instruments that India is duty bound to respect, having freely ratified such instruments and thereby committed itself to respect, protect and fulfill such rights.

These instruments include: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination and the ILO Convention No. 169 on Indigenous and Tribal Peoples.

The current action indicates a potential violation of, *inter alia*, the following rights:

- **The right to adequate housing and in particular the right to be free from forced evictions:**

In this respect, we refer to the General Comment No. 4 (1991) of the UN Committee on Economic, Social and Cultural Rights, that expressly states that “forced evictions are *prima facie* incompatible with the provisions of the Covenant and can only be carried out under specific

circumstances”. Moreover, in its General Comment No. 7 (1997), the Committee emphasized that under international human rights law the exceptional circumstances in which forced evictions could be carried out imposed certain requirements to which State parties to the Covenant must adhere.

First, States must ensure, prior to carrying out any eviction, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Second, legal remedies or procedures should be provided to those who are affected by eviction orders, along with adequate compensation for any property, both personal and real, which is affected. Third, in those rare cases where evictions are considered justified, they should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with the general principles of *reasonableness and proportionality*. Additionally, evictions should never result in rendering individuals homeless or vulnerable to the violations of other human rights. Governments must therefore ensure that adequate alternative housing or resettlement is available for all those affected by the building of the dam.

Displacement of the Adivasis will inevitably occur during the monsoon season if the dam remains at the current height. To allow this to happen without proper and adequate rehabilitation is in contravention of this internationally protected right.

- **The right of indigenous peoples to self-determination and to their traditional systems of sustenance:**

ILO Convention No. 169 on Indigenous and Tribal Peoples deals with, among other aspects, the right of indigenous peoples to maintain their traditional systems, to possession of land and territories traditionally occupied by indigenous peoples and the recognition of their cultural, social and religious values.

The displacement of Adivasis from the lands which they have occupied from many generations is a violation of this legal standard.

- **The right to the highest attainable standard of health:**

All people are entitled to the right to the enjoyment of the highest attainable standard of physical and mental health, according to Article 12 of the Covenant on Economic, Social and Cultural Rights. The right to health, as enshrined in the Covenant, includes an obligation on the part of all States to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. The right to health also extends to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, as well as healthy occupational and environmental conditions.

Displacement without appropriate rehabilitation, including access to adequate housing, water, sanitation, medical and other services, represents a serious health risk to those displaced.

The current action also raises a number of related human rights concerns. These include:

- **The need to redress development-induced displacement losses**

An Adivasi farmer in the Narmada valley whose land faced submergence said: “the forest is our moneylender and banker. From its teak and bamboo we build our houses. From its riches we are able to make our baskets and cots..... from its trees we get our medicines.”

Rehabilitation following development-induced displacement will need to recognize, and compensate, these losses. A consequence of non-recognition of these losses would be impoverishment, and place the human rights of the displaced population at peril.

- **The need to respect certain minimum core obligations**

There are concerns that are being persistently raised about the violation of minimum core obligations, including legal security of tenure, access to drinking water and irrigation facilities at the rehabilitation sites, and the affordability of housing and shelter. It is protest and pressure from the displaced that is seen to have resulted in the provision of some basic facilities.

The adherence to minimum core obligations is necessary to ensure that the lives of the project affected do not fall below the standard delineated by the instruments to which the Indian state is a party.

Each of our individual mandates obligates us to seek collaboration with governments towards the fulfillment of the rights to adequate housing, the rights of indigenous people, the right to the highest attainable standard of health and the right to food, as well as all related human rights. In light of the potential human rights violations indicated in this letter, we request in our capacity as Special Rapporteurs, information pertaining to the decision to raise the height of the Sardar Sarovar dam. In particular, what are the official justifications for this course of action and what proposals are there for rehabilitation of those affected, in accordance with international law?

This letter is our attempt to constructively dialogue with your office on this matter, and to offer our services and advice in resolution of this crisis situation. The decision to raise the water and flood the Adivasis' land is of great concern to us and to the international community.

Two of us have raised issues related to human rights and the Sardar Sarovar Project in our reports to the Commission on Human Rights report (see the report of the Special Rapporteur on adequate housing, UN Doc. E/CN.4/2001/51, para. 81 and the report of the Special Rapporteur on indigenous people, UN Doc. E/CN.4/2003/90, paras. 44-52) and in previous communications. Since that time the human rights situation in the Narmada Valley has worsened. We are thus compelled write this letter to demonstrate our collective concern.

We hope that you will see the urgency of the situation, and accordingly will act without delay. We would greatly appreciate information from Your Excellency's Government concerning the steps taken by the competent authorities in compliance with the provisions contained in the international legal instruments above and are willing and eager to work with you on formulating and implementing an appropriate resolution, based on the obligation to respect, protect and fulfill the human rights of all India's citizens, including the Adivasis of the Narmada valley.

Accept, Your Excellency, the assurances of our highest consideration.

Miloon Kothari
Special Rapporteur on adequate housing as a
component of the right to an adequate standard of living

Rodolfo Stavenhagen
Special Rapporteur on the situation of human rights and fundamental freedoms of
indigenous peoples

Paul Hunt
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