

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of internally displaced persons and the Special Rapporteur on extreme poverty and human rights**

REFERENCE:  
UA IND 8/2017

29 August 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of internally displaced persons and Special Rapporteur on extreme poverty and human rights pursuant to Human Rights Council resolutions 33/30, 33/12, 33/9, 34/9, 34/5, 32/11 and 35/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning new plans for the expansion of the **mega project Sardar Sarovar Dam in the Narmada river valley which would reportedly result in the forced eviction and displacement of 40,000 families** and the allegedly arbitrary arrest on 7 and 8 August 2017 of human rights defenders, Ms. **Medha Patkar**, Ms. **Gayatri**, Ms. **Vimla**, Ms. **Manjula**, Ms. **Pushpa**, Ms. **Bhagwati**, Ms. **Sewati**, Mr. **Dharmendra**, Mr. **Rameshwar** and Mr. **Baau**, as they engaged in a peaceful protest and hunger strike in opposition to this eviction.

Ms. Medha Patkar is a human rights defender working to defend the rights of adivasis, dalits, farmers, labourers and women facing injustice and the founder of both the people's movement, Narmada Bachao Andolan (NBA) and the National Alliance of People's Movements (NAPM).

For decades, the construction and expansion of the Sardar Sarovar Dam on the Narmada River forced the displacement of families and communities. During this period concerns were expressed with regard to the human rights impacts of the project and the treatment of human rights defenders. In April 2006, the Special Rapporteur on adequate housing, the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on the right to food, sent an urgent appeal (IND 12/2006) and released a public statement expressing their concern about the submergence of villages and displacement of over 35,000 families; and on the

situation of environmental activists and human rights defenders involved with Narmada Bachao Andolan (NBA – Save Narmada Movement), in particular, **Ms. Medha Patkar**. On 11 July 2007, the Special Representative and the Special Rapporteur on the right to food, sent another letter of allegations (IND 18/2007) concerning the arrest and detention of **Ms. Medha Patkar** in March 2007 after her participation in public demonstrations.

According to the information received:

*The history of mega project Sardar Sarovar Dam in the states of Gujarat, Madhya Pradesh and Maharashtra*

The Sardar Sarovar Dam is one of the 30 large dams in Narmada Valley, with a reservoir spread over 214 km, part of which is submerged in correlation with increase in the height of the Dam since 1993. Since the project's inception in 1987, civil society organizations and experts have reported serious concerns about the project's impact on the rights of those affected in extensive areas which would be flooded by the building and expansion of the Dam.

In 1987, the Narmada Bachao Andolan (NBA), a network of civil society organizations, reported that the Sardar Sarovar Dam project would result in the displacement of thousands of persons and cause severe damage to the environment by submerging hectares of fertile and irrigable farm land and rich forests. Successive studies and reports confirmed the concerns. The World Bank support to the project was suspended in 1993 after an independent review committee found flaws in the resettlement and rehabilitation of those to be displaced. A Supreme Court ruling also paralyzed works from 1995 to 1999. However, since then, the Government has continued with the project, reportedly, without any further assessment.

The exact number of people affected by the project has varied in official documents. Some estimate that the total number of families affected is at least 70,000 with government figures estimating the number of families affected at 18,000. The project has affected people living in 3 states: Madhya Pradesh (with 192 villages and 1 township in submergence), Maharashtra (with 33 villages), and Gujarat (19 villages). A good proportion of the population affected belong to indigenous communities. Besides residences, the flooding has affected farm land, commerce, schools, religious and historical sites.

Despite Supreme Court judgments of 2000 and 2005 ordering the rehabilitation and resettlement of communities affected by the Dam project, only 14,500 families reportedly received land-based rehabilitation, mostly in Gujarat and Maharashtra, over the last 32 years. Hundreds of families have yet to receive any compensation, and resettlement sites are not fully resourced for occupation, sometimes lacking basic amenities including water access. In Madhya Pradesh,

rehabilitation is particularly precarious and many people continue to live in the original villages falling in the submergence area.

The Dam reached its current level at 121.92 metres in 2006. Further construction was stopped between 2006 and 2014.

#### *Recent plans to increase the Dam height*

In 2014 the newly elected Government announced plans to expand the Sardar Saravar Dam by erecting 17-metres-high gates, raising the total height of the Dam to 138.68 metres. This expansion is contested by the communities to be affected by flooding and was the object of successive legal petitions and protests.

According to information received, no less than 20,000 families, and possibly as many as 40,000 families may be affected by submergence with the closure of the new gates of the Dam. Many of these families were previously affected by the erection of the damn. The newly erected gates closure was planned for August 2017.

As of 2016, land was acquired in order to resettle approximately 14,000 tribal and dalit farmers and their families, who would be affected by the new plans for expanding the Dam, particularly those from Gujarat and Maharashtra. Nonetheless, it is alleged that the status of rehabilitation has been too slow; farmers have been mostly promised barren and non-cultivable lands or meagre cash compensation, and resettlement sites are not in a state of habitation, lacking infrastructure, such as sewage and water pipes, as well as lacking schools, access to health centres and access to other basic rights.

In recent months, tensions between the affected population and authorities increased, significantly in part due to a decision by the Supreme Court (*Narmada Bachao Andolan v Union of India - Writ Petition (C) No. 328/2002*), on 8 February 2017 authorizing officials to “vacate” the newly affected area by 31 July 2017. The decision recognized that a large number of families are yet to receive two hectares of alternative land as entitlement as well as direct payment of a special package. The decision also determined that, under the guidance of the Grievance Redressal Authority established in 2000 by the Supreme Court, the rehabilitation and resettlement should be completed, making available all the civic amenities as per the Tribunal Award. On the other hand, the Court also established that “*all the occupants including all the 'project affected families' shall vacate the submergence area under reference, on or before 31.07.2017*”, and in case there are individuals in the submergence area after the aforesaid deposit has been made into the account of the Grievance Redressal Authority, after 31.07.2017, it shall be open to the State Government to remove all such individuals forcibly.”

The request to vacate the area and the authorisation to forcefully remove residents was of particular concern to the communities affected. The State Government of Madhya Pradesh allegedly issued orders directing the affected families in the submergence area of the Dam, close to Narmada river in Madhya Pradesh, to vacate their dwellings by 31 July 2017 without providing alternatives for resettlement. Reportedly, large police force operations are being planned to forcibly evict the remaining families especially from three districts of Badwani, Dhar and Khargone. The publicly declared estimate of families to be evicted by the Government is about 15,000 families (although civil society considers the total much higher).

Serious concerns exist with regard to the lack of consultation with the affected communities and also with the reliability of the deadlines for the completion of the relocation of such a large population in the period between 9 February and 31 July 2017, while considering only the time needed to build housing units and minimal infrastructure to support them and the potential impact of the next monsoon season. These concerns are furthered by the fact that previously affected communities were not yet fully resettled.

*The case of Ms. Medha Patkar, Ms. Gayatri, Ms. Vimla, Ms. Manjula, Ms. Pushpa, Ms. Bhagwati, Ms. Sewati, Mr. Dharmendra, Mr. Rameshwar and Mr. Baau*

On 27 July 2017, Ms. Medha Patkar, along with Ms. Gayatri, Ms. Vimla, Ms. Manjula, Ms. Pushpa, Ms. Bhagwati, Ms. Sewati, Mr. Dharmendra, Mr. Rameshwar and Mr. Baau , initiated a protest against the eviction order for 31 July 2017 and plans for further development of the Dam by means of an open-ended hunger strike.

On 7 August 2017, on the 12<sup>th</sup> day of their hunger strike, Ms. Medha Patkar and four out of the nine other human rights defenders participating in the peaceful protests were allegedly forcefully removed from the Dharna protest site and arrested.

On 8 August 2017, the five remaining human rights defenders were subsequently arrested for participating in the peaceful protest and hunger strike, making a total of ten detainees. Two human rights defenders, of the twelve people initially engaged in the protest and hunger strike, reportedly remained at the Dharna protest site and continued their hunger strike, together with ten more new people who joined the hunger strike after the incidents.

It is alleged that 2,000 police officers wearing bullet proof vests and carrying batons with nails fixed on them descended on the peaceful protest and used

disproportionate force and violence against the human rights defenders. Police allegedly beat the protesters and broke chairs and rope fencing which surrounded the protest site.

Following their arrest, Ms. Medha Patkar was reported to have been taken by the Madhya Pradesh police, against her will, to the Bombay Super Speciality Hospital at Indore (125 miles from the protest site) and was kept in isolation. In addition, Ms. Gayatri, Ms. Vimla, Ms. Manjula, Ms. Pushpa, Ms. Bhagwati, Ms. Sewati, Mr. Dharmendra, Mr. Rameshwar and Mr. Baau, who were arrested alongside Ms. Patkar were also taken by the Madhya Pradesh police to a different hospital, also against their will. All these human rights defenders were reportedly deprived of their liberty in hospitals with limited access to family or legal counsel.

On 9 August 2017, Ms. Medha Patkar was discharged from Bombay Hospital by the Indore Police. That same day, the Chief Minister of Madhya Pradesh state and the administration claimed that Ms. Medha Patkar was hospitalised given her failing health. However, Ms. Medha Patkar reportedly did not consent to hospitalization and, moreover, no one was granted access to her until only after much pressure, one of her colleagues was given limited access to meet her.

Following her discharge from hospital at approximately 4pm on 9 August 2017, Ms. Patkar's vehicle was allegedly intercepted by approximately thirty five police vehicles. It is reported that the driver of her vehicle was forcefully removed from the vehicle and Ms. Patkar was taken to Dhar to appear in front of the Sub-Divisional Magistrate. Ms. Patkar was initially arrested under Section 151 (read with Sections 107 & 116) of the Criminal Procedure Code (CrPC). These Sections grant the police the power to arrest individuals in cases when one is suspected of being "likely to commit a breach of the peace or disturb the public tranquillity". A copy of the order of the Sub-Divisional Magistrate was provided to her and Ms. Patkar was reportedly detained at Dhar District Jail.

Ms. Patkar has subsequently been charged with two more offences namely assault or criminal force to deter a public servant from discharge of duty (Section 353 of the Indian Penal Code) and kidnapping of Nayab Tehsildar Kamal Mandeliya, a government official at the site of the protest on 1 August (Section 365 of the Indian Penal Code).

Ms. Patkar appeared before the JMFC-Kukschi Court on 12 August 2017, where she was granted bail in the case of a possible breach of the peace. On 16 August 2017, she was also granted bail for the other two charges, but denied bail on the charge of kidnapping under Section 365 of the Indian Penal Code.

Ms. Patkar ended her hunger strike on 12 August 2017, reportedly at the request of several organisations associated with the Narmada Bachao Andolan due to

concerns for her health. Ms. Gayatri, Ms. Vimla, Ms. Manjula, Ms. Pushpa, Ms. Bhagwati, Ms. Sewati, Mr. Dharmendra, Mr. Rameshwar and Mr. Baau, who were arrested with her also reportedly ended their hunger strikes on 12 August 2017, having been released from the Dhar District Hospital on 9 August 2017.

On 23 August 2017, Ms. Medha Patkar was released, having received bail through an order of the Madhya Pradesh High Court. However, none of the criminal charges against her have been dropped.

It is also alleged that the police refused to file a First Instance Report (FIR) following receipt of a complaint from NBA but filed a separate FIR where they named thirty five people and another 2,500 persons, in order to criminalise the peaceful act of Ms. Medha Patkar and other activists from NBA.

Concern is expressed at the thousands of families, often members of indigenous communities and castes often discriminated against, affected by the Sardar Sarovar Dam, who have faced, and will continue to face, violations of their right to an adequate standard of living, including food and adequate housing, and their rights as indigenous peoples, as a result of the construction and successive expansions of the Dam and the shortcomings of the resettlement, compensation and rehabilitation plans. Concern is also expressed that the consent of indigenous peoples for the potential relocation has not been sought, nor have they been consulted with in good faith, prior to the proposed plan. Particular concerns are expressed with regard to the alleged recent decision of the Government of Madhya Pradesh to request 15,000 families to vacate areas which would be affected in the newly achieved increase of the Dam height.

We also express concern at the alleged disproportionate use of force by police officers who descended on the protest against the state of Madhya Pradesh's decision, thereby contravening the defenders' right to peacefully engage in protests and exercise their rights to freedom of opinion and expression and freedom of assembly and association.

Concern is also expressed at the fact that Ms. Medha Patkar was deprived of her liberty for over two weeks as it is believed that this was aimed at sanctioning her legitimate and peaceful work in defence of human rights in India. We finally express concern at the forced hospitalization of hunger strikers in violation of their right to health, which includes their right to receive healthcare with full and informed consent.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which India acceded to on 10 April 1979, and in particular to articles 9, 14, 19, 21 and 22 which provide for the rights not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal as well as rights to freedom of expression, peaceful assembly and freedom of association.

In this respect, we wish to refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. Articles 1 and 2 state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We also call your attention to article 17 of the ICCPR and articles 2 and 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by India on 10 April 1979. In accordance with these instruments, forced eviction is contrary to the rights to adequate housing, to non-discrimination and to freedom from arbitrary or unlawful interference with privacy, family and home. These articles guarantee non-discrimination in the exercise of the rights in the Covenants, notably the right to an adequate standard of living, including housing.

The Committee on Economic, Social and Cultural Rights in its general comments No. 4 and No. 7 has stressed that the right to adequate housing includes various essential elements such as location, accessibility and legal security of tenure; and has underlined the need to provide adequate legal protection from forced eviction, including access to an effective remedy of those that are affected by eviction orders. More specifically, in its general comment No. 7 the Committee has noted that States must ensure, prior to carrying out any evictions, that all feasible alternatives are explored in consultation with the affected persons, that alternatives are provided to avoid homelessness and that due process is ensured. According to these general comments, India must further explore all feasible alternatives to forced eviction in consultation with the affected persons, and it must prevent that all evicted persons are rendered homeless by providing adequate alternative housing, facilities, resettlement and compensation for lost property.

In this context, we would like to particularly recall the report on the recent visit of the Special Rapporteur on adequate housing to India (A/HRC/34/51/Add.1) where concern was expressed on the recurrent impact of the construction of large-scale dams and megaprojects frequently resulting in the displacement and the deprivation of land of rural communities. Concern was also expressed on the disproportional impact of displacement of indigenous communities. The same report called for the adoption of a national moratorium on forced evictions and demolitions of homes and on the adoption of

legislation ensuring these are implemented in strict compliance with international human rights law. It also called the Government to ensure that resettlement takes place in a time-bound manner, ensuring meaningful consultation with those who are directly affected, the provision of fair compensation and the adequate resettlement. We also recall the reports by the Special Rapporteur on adequate housing on a) the obligations of subnational governments in the implementation of the right to adequate housing (A/HRC/28/62); and b) homelessness and the right to adequate housing (A/HRC/31/54). We also recall the Basic Guidelines and on Development- Based Evictions and Displacement (A/HRC/4/18-Annex).

We also wish to refer to UN Declaration on the Rights of Indigenous Peoples adopted by the General Assembly on 13 September 2007 which encourages States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned.

Furthermore, the 1998 Guiding Principles on Internal Displacement establish that every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence, including in cases of large-scale development projects, which are not justified by compelling and overriding public interests (Principle 6 (c)). Principle 7.1 states that prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimise displacement and its adverse effects.

We would also like to draw the attention of your Excellency's Government to the UN Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council (A/HRC/RES/17/31) in 2011, which inter alia, recognize the role of business enterprises as specialized organs of society performing specialized function, required to comply with all applicable laws and to respect human rights and the need for rights and obligations to be matched to appropriate and effective remedies when breached.

Regarding the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, we would like to refer to article 12 of the ICESCR. The right to health contains both freedoms and entitlements. The freedoms include the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment, and experimentation (ICESCR General Comment 14, Para.8). Guaranteeing informed consent is a fundamental feature of respecting an individual's autonomy, self-determination and human dignity in an appropriate continuum of voluntary health-care services. Informed consent in health is an integral part of respecting, protecting and fulfilling the enjoyment of the right to health as elaborated in article 12 of ICESCR and enshrined in numerous international and regional human rights treaties and national constitutions. (A/64/272, Para.18)



With respect to hunger strikes, we would like to recall that the best way to respond to these demonstrations is to address the underlying human rights violations that are the basis of the protest. Authorities have a duty to look for solutions to extreme situations created by a hunger strike, including through good faith dialogue about the grievances, and always respecting the rights of those who use this form of protest, including their rights to health and informed consent.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide details of all measures taken to ensure the enjoyment of the right to an adequate standard of living, including housing and food, and rights of indigenous peoples, in particular, for those individuals, communities and peoples facing involuntary resettlement as part of the construction and successive expansion of the Dam over the last two decades.
3. Please provide details of the specific resettlement plans of the Government of Madhya Pradesh for the 15,000 families allegedly receiving orders to vacate areas which would be affected in the new increase of the Dam height. In particular please explain when and how many persons living in the affected villages have been, and will be, displaced from their lands and to which regions of the country. In this context, please identify if measures were taken to institute a moratorium on forced evictions and to regulate these practices in line with international human rights law.
4. Please provide details of any national legislation, policies or programmes directly relevant to development-related involuntary resettlement. In particular, please provide information on the specific ways in which existing international standards on the right to adequate housing and internal displacement have been implemented in this context by the local, subnational and central governments.

5. Please provide full details of measures taken to ensure the right to information and meaningful consultation with the affected villagers and how their opinions and free prior and informed consent are reflected in the progress of the construction of the Dam and the resettlement process.
6. Please provide information on any social and environmental impact assessment(s) of the planned Dam height increase conducted by the Government before its execution. Also please explain how the recommendations emanating from these instruments have been taken into account and incorporated in revised programmes and plans.
7. Please provide information on whether your Excellency's Government is investigating the allegations of violence and disproportionate force used by the 2,000 police officers who allegedly descended on the Dharna protest site on 7 August 2017.
8. Please provide the legal basis for the arrests of Ms. Medha Patkar, Ms. Gayatri, Ms. Vimla, Ms. Manjula, Ms. Pushpa, Ms. Bhagwati, Ms. Sewati, Mr. Dharmendra, Mr. Rameshwar and Mr. Baau.
9. Please provide further explanations on why the charges against Ms. Medha Patkar have not been dropped following her release on bail as per an order of the Madhya Pradesh High Court on 23 August 2017. Please indicate whether there is a date set for a hearing on these charges.
10. Please provide details on whether Ms. Medha Patkar, Ms. Gayatri, Ms. Vimla, Ms. Manjula, Ms. Pushpa, Ms. Bhagwati, Ms. Sewati, Mr. Dharmendra, Mr. Rameshwar and Mr. Baau had access to legal representation of their choosing and how soon after their arrest this occurred. Please also elaborate on whether Ms. Medha Patkar, Ms. Gayatri, Ms. Vimla, Ms. Manjula, Ms. Pushpa, Ms. Bhagwati, Ms. Sewati, Mr. Dharmendra, Mr. Rameshwar and Mr. Baau were able to communicate with their families while deprived from their liberty in hospitals.
11. Please provide information regarding measures that were taken to guarantee the enjoyment of the right to health by Ms. Medha Patkar Ms. Gayatri, Ms. Vimla, Ms. Manjula, Ms. Pushpa, Ms. Bhagwati, Ms. Sewati, Mr. Dharmendra, Mr. Rameshwar and Mr. Baau, in particular concerning their right to be free from non-consensual medical treatment and their right to provide informed consent as an essential feature of their individual autonomy and dignity in the continuum of voluntary health-care services.

12. Please indicate what measures have been taken to ensure that the legitimate right to meet and assembly peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.
13. Please indicate what measures have been taken to ensure that human rights defenders India are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

In addition, we would like to draw your Excellency's Government's attention to paragraph 23 of the methods of work of the Working Group on Arbitrary Detention, according to which, "after having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

In light of the serious implications of these allegations and the risk of on-going and irreversible impacts on several human rights of thousands of families we are considering the possibility of expressing these concerns publicly in the near future. If a press release is issued, it will indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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