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Internally-Displaced Persons and the Sardar Sarovar Project: A Case for Rehabilitative Reform in Rural Media

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INTERNALLY DISPLACED PERSONS AND THE SARDAR SAROVAR PROJECT: A CASE FOR REHABILITATIVE REFORM IN RURAL INDIA

POOJA MEHTA*

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* J.D. Candidate, 2005, American University, Washington College of Law; B.S., Finance, 2000, Boston College. This article is dedicated to my parents, Ashok and Anita, and my brother Amit, for their love, support, and encouragement. I also dedicate this article to Amit Chugh, for being there for me in every imaginable way. I would also like to express my gratitude and adoration for my wonderful extended family and friends. Specifically, I thank my friends at American University, who made law school far more enjoyable than I anticipated. Finally, I extend my thanks to members of the *American University International Law Review* for their assistance and hard work, and particularly to my editor, Alben Petrova, for her sincere and invaluable guidance.

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INTRODUCTION

The human and environmental¹ consequences of major dam construction projects, such as the Sardar Sarovar Project ("SSP")² in India, generate great attention.³ The large-scale forcible displacement of citizens within the borders of a country is especially controversial.⁴ The Indian government contends that large dam projects, like the SSP,⁵ will provide drought-prone areas with

1. See Suzette Brooks Masters, *Environmentally Induced Migration: Beyond a Culture of Reaction*, 14 GEO. IMMIGR. L.J. 855, 855 (2000) (noting that environmental events, such as natural disasters and industrial accidents, and other environmental factors, like climate change and increased population density, surpass armed conflicts as the chief cause of involuntary population displacement).

2. See THE HUMAN RIGHTS OF INDIGENOUS PEOPLES 112 (Cynthia Price Cohen ed., 1998) [hereinafter INDIGENOUS RIGHTS] (noting that the Indian government's development studies of the Narmada River basin concluded that there was insufficient land on which to resettle the displaced). The Sardar Sarovar Project involves the construction of more than 3,000 dams, including thirty large dams on the river Narmada, whose reservoir extends into three states in western India – Gujarat, Maharashtra, and Madhya Pradesh. *Id.* The Indian government claims that the Sardar Sarovar Project will irrigate 1.8 million hectares of drought-prone areas in Gujarat and 75,000 hectares in Rajasthan, as well as provide domestic water to 2.4 million people. *Id.* Local communities criticized such claims, arguing that the government exaggerated the benefits and that the project displaces as many as 320,000 people, and affects the livelihood of thousands more. *Id.* See generally Friends of River Narmada, *A Brief Introduction to the Narmada Issue* (presenting the views of the poor and underprivileged persons affected by the SSP and the grass roots movements that have grown out of their struggle), available at <http://www.narmada.org/introduction.html> (last visited Feb. 19, 2005).

3. See RAMASWAMY R. IYER, WATER: PERSPECTIVES, ISSUES, CONCERNS 132 (2003) (suggesting that a major push needs to be made to move away from the idea that alternatives to large dams can only play a small, supplementary role in water resource planning).

4. See *id.* at 137 (stating that large dams typically become the centerpiece of conflicts, whether inter-country or intra-country). Historically, India and Bangladesh disputed over Ganga waters in the Farakka Barrage Project in India, and projects on the Kosi and Gandak rivers created tension between India and Nepal, which eventually led to further mistrust during the Tanakpur Barrage Project. *Id.* See also Kader Asmal, *Introduction: World Commission on Dams Report, Dams and Development*, 16 AM. U. INT'L L. REV. 1411, 1418 (2001) (discussing the shift away from large dams and the current debate on the practicality of removing more dams and the cost of compensating those harmed by large dams).

5. See SHYAM DIVAN & ARMIN ROSENCRAZ, ENVIRONMENTAL LAW AND POLICY IN INDIA: CASES, MATERIALS, AND STATUTES 302 (2002) (noting that the Narmada River basin is home to twenty-one million people and encompasses an

irrigation and drinking water.⁶ Critics, on the other hand, argue that by submerging vast amounts of land, the SSP displaces hundreds of thousands of indigenous people⁷ and creates environmental refugees,⁸ also known as internally displaced persons ("IDPs").⁹

area of 98,796 square kilometers). There are over four thousand "large dams" in India, as defined by The International Commission on Large Dams. *Id.* See also IYER, *supra* note 3, at 123 (commenting on the induction of Western technology that quickly ushered in the era of large dams, projects which became symbols of "development" and came to be regarded as "the temples of modern India").

6. See Pub. Broad. Serv.: Wide Angle, *Debate: To Build or Not to Build?* (2003) (relaying the discussion between two leading players in the Sardar Sarovar controversy: S.K. Mohapatra, of Sardar Sarovar Narmada Nigam Ltd., an organization responsible for the dams' construction, and Medha Patkar, an activist and founder of the Narmada Bachao Andolan), available at <http://www.pbs.org/wnet/wideangle/shows/dammed/debate.html> (last visited Feb. 19, 2005); see also Arundhati Roy, *The Cost of Living*, FRONTLINE, Feb. 5, 2000, at 3-6 (noting that the first dam on the Narmada River, the Bargi Dam, irrigates only five percent of the land it was said to benefit), available at <http://www.flonnet.com/fl1703/17030640.htm> (last visited Feb. 19, 2005); R. Rangachari et al., *Large Dams: India's Experience*, in WORLD COMMISSION ON DAMS CASE STUDY 214 (2000) (discussing the inequitable distribution of costs and benefits in India's implementation of dams), available at <http://www.dams.org/kbase/studies/in/> (last visited Feb. 19, 2005). The scheduled tribes and castes pay a disproportionate share of the costs; however, farmers with large landholdings enjoy most of the irrigation benefits, perpetuating current inequities in Indian society). *Id.*

7. See Press Release, Narmada Bachao Andolan, World Commission of Dams Critiques Large Dams (Nov. 25, 2000) (demanding that the Government of India accept the World Commission on Dams' conclusions and recommendations, and calling for the examination and implementation of alternatives to big dams), available at <http://www.narmada.org/nba-press-releases/november-2000/wcd.report.nba.pr.html> (last visited Feb. 19, 2005). Serious doubts have been raised about the magnitude and the equitable distribution of the benefits, and the overall economic and financial viability of the dams. *Id.* See also Upendra Baxi, *What Happens Next is Up to You: Human Rights at Risk in Dams and Development*, 16 AM. U. INT'L L. REV. 1507, 1519 (2001) (criticizing the World Commission on Dams ("WCD") Report for failing to specify ways in which governmental decisions relating to dam construction may violate human rights, and instead distinguishing international human rights law as a "robust foundation," rather than a hard body of law). The WCD Report also failed to capitalize on an opportunity to advance the future of human rights by acknowledging that the general human rights regime does not fully address the dilemmas of peoples affected by large dams. *Id.* at 1522.

8. See generally Dana Zartner Falstrom, *Stemming the Flow of Environmental Displacement: Creating a Convention to Protect Persons and Preserve the Environment*, 2001 COLO. J. INT'L ENVTL. L. & POL'Y 1 (discussing the

One of several groups opposed to the project, the Narmada Bachao Andolan ("NBA"), also known as the "Save the Narmada Movement," denounced the SSP for its lack of adequate planning.¹⁰ The NBA also pressured the international community to take action to mitigate development-induced displacement.¹¹ The Narmada Movement attracted international interest to the problems of the displaced¹² and exposed the government's failure to complete a comprehensive resettlement and rehabilitation plan.¹³

As a result of the campaign against the SSP, the World Bank, which initially funded the project, commissioned its own independent review of the project in 1991.¹⁴ The report substantiated

"environmental refugee" as one who is displaced from his or her home and seeks shelter in another place for reasons relating to the environment). A new refugee convention is needed that provides protection for environmentally displaced persons and that also creates affirmative obligations for states to end future environmental displacement. *Id.* at 23-29.

9. See NORWEGIAN REFUGEE COUNCIL, *INTERNALLY DISPLACED PEOPLE: A GLOBAL SURVEY 3* (2d ed. 2002) [hereinafter NORWEGIAN REFUGEE COUNCIL] (stating that IDPs are forced to seek safety before their own governments and within the confines of national borders).

10. See DEVELOPMENT AND DISPLACEMENT 61 (Jenny Robinson ed., 2002) (noting that the NBA, a people's movement, formed in 1988 when various grass roots movements joined forces to put pressure on the Indian government and the World Bank to improve the implementation of the project).

11. See *id.* (remarking on the progress of resistance movements in India, which brought about comprehensive land surveys to ensure just compensation, the inclusion of people affected by subsidiary projects in resettlement and rehabilitation plans, and a provision for full information on all aspects of the SSP).

12. See *id.* (tracing the evolution of the campaign against the SSP, which mobilized local people and established cooperative links with nongovernmental organizations and social movements all over India and worldwide).

13. See S. PARASURAMAN, *THE DEVELOPMENT DILEMMA: DISPLACEMENT IN INDIA* 81-82 (1999) (discussing the pivotal role activists played in pressuring the government to develop a comprehensive relocation and rehabilitation policy).

14. See BRADFORD MORSE ET AL., *SARDAR SAROVAR: THE REPORT OF THE INDEPENDENT REVIEW* (1992) [hereinafter MORSE REPORT] (documenting the World Bank's participation in the Sardar Sarovar Projects); see also Thomas R. Berger, *The World Bank's Independent Review of India's Sardar Sarovar Projects*, 9 AM. U. J. INT'L L. & POL'Y 33 (1993) (commenting on the findings documented in the World Bank's Independent Review); Anil Patel, *Resettlement Politics and Tribal Interest, in THE DAM AND THE NATION - DISPLACEMENT AND RESETTLEMENT IN THE NARMADA VALLEY* 66 (Jean Dreze et al. eds., 1997) (discussing the World Bank's agreement to provide \$450 million to finance the construction of the Sardar Sarovar dam and canal network).

the NBA's criticisms and concluded that the Indian government failed to resettle and rehabilitate the displaced.¹⁵ The report also recommended that the Bank "step back" from the project,¹⁶ which it eventually did in 1993.¹⁷ The Indian government, however, opted to continue without Bank funding despite citizen protests, international condemnation, a sizeable decrease in financial support, and substantial concern over the project's impact on the environment and the health of neighboring inhabitants.¹⁸ While the World Bank's withdrawal constituted a significant milestone in the history of the project, it also diminished pressure on the project-implementing

15. See MORSE REPORT, *supra* note 14, at xii (declaring that the World Bank failed to adequately assess the environmental impacts of the Sardar Sarovar Project); see also INDIGENOUS RIGHTS, *supra* note 2, at 113 (commenting on the World Bank's review of the SSP, which was initiated in 1990 after several requests from Indian and international environmental and human rights groups). See generally Michael Cernea, *Bridging the Research Divide: Studying Development Oustees*, in IN SEARCH OF COOL GROUND: WAR, FLIGHT AND HOMECOMING IN NORTHEAST AFRICA (Tim Allen & James Currey eds., 1996) (noting that IDPs created by the phenomenon of development-induced displacement are often overlooked).

16. See MORSE REPORT, *supra* note 14, at 356-58 (stating that the SSP's present form is flawed, and that resettlement and rehabilitation of the people displaced by the projects was not properly considered or adequately addressed). The Morse Report also alleged that the World Bank and India shared responsibility for the resulting situation. *Id.* Furthermore, the Morse Report concluded that authorities involved in the development of mega projects failed to consider the human rights of the displaced. *Id.*

17. See Mahendra Lama, *Internal Displacement in India: Causes, Protection and Dilemmas*, FORCED MIGRATION REV., Aug. 2000, at 25 (discussing the World Bank's "Project Completion Report," which demonstrated that India had a disturbing track record in operating and maintaining the Sardar Sarovar dams), available at <http://www.fmreview.org/FMRpdfs/FMR08/fmr8full.pdf> (last visited Feb. 19, 2005). Thus, in 1993, the World Bank cancelled plans to lend the Indian government additional funds because project implementers failed to meet basic conditions, such as the identification of displaced persons, and the preparation and planning for their resettlement. *Id.*

18. See INDIGENOUS RIGHTS, *supra* note 2, at 113 (suggesting that the World Bank would have possibly reevaluated its decision to invest in the SSP project, or suggested modifications, if the Bank had sought an independent assessment on the magnitude of the displacement and the feasibility of resettlement). The 1985 Credit and Loan Agreement with the World Bank specified that the SSP should take measures to adequately resettle and rehabilitate the displaced persons. *Id.*

agency to adhere to international social and environmental requirements.¹⁹

The Indian government's decision to pursue the project without the Bank's involvement forced the SSP resistance movement to mobilize its forces at the domestic level.²⁰ In 1994, the NBA filed a public interest litigation petition²¹ with the Supreme Court of India.²²

19. See *id.* at 114 (remarking on India's efforts to complete the SSP at all costs). Officials in charge of the SSP made up for its financial deficit by declaring the SSP a "national project." *Id.*

20. See IYER, *supra* note 3, at 169 (discussing how the NBA was partly encouraged to bring suit by the recent receptivity of the Supreme Court of India to public interest litigation). While the NBA's legal campaign against the project was ultimately unsuccessful, their efforts produced remarkable results, including the World Bank's appointment of an Independent Review. *Id.*

21. See, e.g., *People's Union for Democratic Rights v. Union of India* (1982) 1 S.C.R. 456 (announcing that any person acting in the public interest may petition the Indian Supreme Court on behalf of the underprivileged); see generally Vijayashri Sripati, *Toward Fifty Years of Constitutionalism and Fundamental Rights in India: Looking Back to See Ahead (1950-2000)*, 14 AM. U. INT'L L. REV. 413, 458 (1998) (commenting on the success of judicial review in India and the use of constitutional litigation as a tool to liberate India's poor and oppressed citizens). The Supreme Court, in its recent past, expanded its human rights jurisdiction in a judge-led revolution known as the Public Interest Litigation ("PIL") movement in India. *Id.* at 453. The Court, in the beginning stages of the movement, broadened the concept of *locus standi*, or standing, and removed the previous requirement where petitioners were required to show personal injury. *Id.* at 454. Though PIL is not without critics, the Court played a vital role in reinvigorating respect for the Constitution and for the fundamental rights provisions contained within. *Id.* See generally South Asian Human Rights Documentation Centre, Human Rights Features, *Collective Rights in India: A Re-assessment* (describing the disparity between India's laws on the books and what occurs in practice), available at <http://www.hrdc.net/sahrdc/hrfeatures/HRF36.htm> (last visited Feb. 19, 2005). India has a progressive constitution, a court system that has witnessed an increase in public interest litigation, and a society with an energized spirit that contributed to the creation of the Narmada Movement. *Id.* Yet, India has not attained its significant potential for the protection of collective rights because PIL does not operate within a legal framework, and does not have the type of institutional support that provides it consistency or sustainability. *Id.* As a result, the progress of the PIL movement is largely subject to the attitudes of the judges sitting on the bench. *Id.*

22. See *Written Submissions on Behalf of the Petitioners, Narmada Bachao Andolan v. Union of India and Others*, A.I.R. 1994 S.C. 319 (arguing, among other things, that SSP authorities failed to consider all pertinent issues and did not provide the people affected by the project with an opportunity to make submissions before proceeding with the project). The petition remarked that the SSP was flawed

The Indian government halted work on the dam in 1995 due to a Supreme Court ruling recognizing that the rehabilitation of displaced people was inadequate.²³ However, an October 18, 2000 Indian Supreme Court ruling allowed construction of the SSP to proceed.²⁴ Given that India still lacks a comprehensive legal framework for defining the rights of the affected people and the obligations of the agencies causing displacement, the debate continues.²⁵

This Comment attempts to clarify issues raised by the debate.²⁶ In particular, it examines India's struggle to protect its vulnerable citizens in its quest to implement the SSP, and proposes some guidelines for reform.²⁷ Part I discusses the existing international and

and that it could not be implemented without serious violations of human rights and harm to the environment. *Id.*

23. See Order of May 5, 1995, *Narmada Bachao Andolan v. Union of India and Others*, A.I.R. 1994 S.C. 319 (concluding that a review of the SSP project was urgently needed).

24. See *Narmada Bachao Andolan v. Union of India and Others*, A.I.R. 2000 S.C. 587 (directing that the SSP should be completed at the earliest possible time and in compliance with the conditions that mandated land-for-land rehabilitation of all affected families twelve months prior to any increase in dam height).

25. See Patel, *supra* note 14, at 66 (linking the World Bank's initial involvement with the Sardar Sarovar dam to the larger political atmosphere that surrounds dam construction); see generally W. COURTLAND ROBINSON, RISKS AND RIGHTS: THE CAUSES, CONSEQUENCES, AND CHALLENGES OF DEVELOPMENT-INDUCED DISPLACEMENT 10 (Brookings Institution Project on Internal Displacement 2003) (commenting on the "new development paradigm" which promotes poverty reduction, environmental protection, social justice, and human rights, and understands development as a practice that brings benefits and imposes costs), *available* at <http://www.brook.edu/dybdocroot/fp/projects/idp/articles/didreport.pdf> (last visited Feb. 19, 2005).

26. See generally ROBINSON, *supra* note 25 (tracing the debate in a framework that expressly deals with the rights of the displaced persons who are at risk, and the obligations of the Indian government to provide for the nation's economic development).

27. See Lama, *supra* note 17, at 24-26 (recognizing that estimating the number of IDPs in India is difficult because no central authority exists that is responsible for coordinating data from central and state governments to ensure regular monitoring). The causes of internal displacement in India vary, which further intensifies the difficulty in monitoring and recording the number of IDPs. *Id.* It is estimated that during the past fifty years, dam projects displaced between sixteen to thirty-eight million people. *Id.* See generally Rangachari et al., *supra* note 6 (providing a detailed discussion of the history of dams in India, the objectives

domestic legal frameworks that govern development projects and protect the rights of the internally displaced.²⁸ Part II analyzes binding and non-binding international laws and norms that deal directly with the issues presented by the SSP.²⁹ Part II further analyzes the shortcomings of Indian laws, and how the SSP has induced impoverishment and violated human rights.³⁰ Part III recommends the revision of the SSP and concludes that India should implement and adopt a legal framework to address issues of development-induced displacement and provide IDPs with legally enforceable rights regarding resettlement and rehabilitation.³¹

I. BACKGROUND

A. INTERNATIONAL LEGAL FRAMEWORK FOR PROTECTING THE INTERNALLY DISPLACED

1. *U.N. Guiding Principles on Internal Displacement*

Unlike refugees,³² internally displaced persons do not benefit from an international legal and institutional framework.³³ However, in the

supporting the implementation of dam-building projects, and the negative social and environmental effects of dams);

28. See discussion *infra* notes 32-90 (describing the current international and domestic human rights instruments pertinent to development-induced displacement that provide States with normative frameworks as well as legal obligations).

29. See discussion *infra* notes 91-105 and accompanying text (articulating how international laws and norms guide or require India to comply with human rights standards in the implementation of the SSP).

30. See discussion *infra* notes 106-42 and accompanying text (criticizing India's legal instruments as inadequate for dealing with internal displacement in a manner that shows respect for human rights).

31. See discussion *infra* notes 143-66 and accompanying text (suggesting that SSP authorities take steps to revise current resettlement and rehabilitation policies, and that India provide IDPs with the right to rehabilitation).

32. See WALTER KALIN, GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT: ANNOTATIONS 3 (Am. Soc'y of Int'l L. & Brookings Institution Project on Internal Displacement, Studies in Transnational Legal Policy No. 32, 2000) (highlighting that refugees are granted a special legal status because they have lost the protection of their own country), available at http://www.asil.org/study_32.pdf (last visited Feb. 19, 2005).

33. See Richard C. Holbrooke, Statement in the United Nations Security Council on Promoting Peace and Security: Humanitarian Assistance to Refugees in Africa (Jan. 13, 2000) (calling for an expansion of the refugee definition which

absence of an international agreement comparable to the 1951 Refugee Convention,³⁴ an encouraging normative framework to advance the rights of IDPs has emerged.³⁵ The U.N. Guiding Principles on Internal Displacement (“Guiding Principles”),³⁶ established in 1998, were the first guidelines developed within the context of human rights law and international humanitarian law to address internal displacement and development-induced displacement.³⁷ The Guiding Principles define the internally displaced as persons “who have been forced or obliged to flee or leave their homes or places of habitual residence” to “avoid the effects of armed conflict, situations of generalized violence,

erases the distinction between a refugee and a person who is internally displaced), available at http://www.un.int/usa/00_006.htm (last visited Feb. 19, 2005).

34. See United Nations Convention Relating to the Status of Refugees, *adopted* July 28, 1951, art. 1, 19 U.S.T. 629, 189 U.N.T.S. 137 (entered into force Apr. 22, 1954) (setting forth the definition of a refugee and State Parties' obligations under international law), available at http://www.unhchr.ch/html/menu3/b/o_c_ref.htm (last visited Feb. 19, 2005).

35. See Francis Deng, *Foreword* to SUSAN FORBES MARTIN, HANDBOOK FOR APPLYING THE GUIDING PRINCIPLES OF INTERNAL DISPLACEMENT i-iii (United Nations Office for the Coordination of Humanitarian Affairs 1999) (providing field practitioners and advocates with pointers for applying the Guiding Principles in the field), available at [http://www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5CTJBU/\\$FILE/IDPprinciples.pdf?OpenElement](http://www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5CTJBU/$FILE/IDPprinciples.pdf?OpenElement) (last visited Feb. 19, 2005). “Although the Guiding Principles themselves are not a binding legal document comparable to a treaty, they are based on and consistent with international human rights law, humanitarian law, and refugee law by analogy.” *Id.* at i.

36. See *Guiding Principles on Internal Displacement: Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commission Resolution 1997/39*, U.N. ESCOR Comm’n on Hum. Rts., 54th Sess., Agenda Item 9(d), Addendum 2, ¶¶ 8-12, U.N. Doc. E/CN.4/1998/53/Add.2 (1998) [hereinafter *Guiding Principles*] (intending to be “consistent with international human rights law and international humanitarian law,” but also clarifying gray areas and filling in gaps in the law). Francis Deng spearheaded the development of the Guiding Principles in collaboration with numerous scholars, nongovernmental organizations, and the United Nations Commissioner for Refugees. *Id.* ¶¶ 5-12.

37. See NORWEGIAN REFUGEE COUNCIL, TRAINING WORKSHOP ON THE U.N. GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT 4 (2001) [hereinafter TRAINING WORKSHOP] (noting that the Guiding Principles do not provide new rights, but reiterate previously existing rights and explicitly apply such rights to IDPs), available at http://www.idpproject.org/training/reports/India_workshop_2001.pdf (last visited Feb. 19, 2005).

violations of human rights, or natural or human-made disasters, and who have not crossed an internationally recognized [s]tate border.”³⁸

The Guiding Principles are neither binding nor customary international law.³⁹ Even without such status, the Guiding Principles are useful because they establish that every person has a right to protection from displacement.⁴⁰ The Guiding Principles assert that project authorities should explore all feasible alternatives in order to avoid displacement altogether, and in situations in which displacement is unavoidable, Principle 7 stresses the need for concerned authorities to minimize the adverse effects of the displacement.⁴¹ Such measures include providing adequate financial compensation as well as alternative accommodation of comparable value and use.⁴²

38. *Guiding Principles*, *supra* note 36, at Annex, Introduction, para. 2 (declaring that the Guiding Principles serve as an international standard to guide governments in providing assistance and protection to internally displaced persons, and reflect current, as well as developing law, on the issue of displacement).

39. See Marco Simons, *The Emergence of a Norm Against Arbitrary Forced Relocation*, 34 COLUM. HUM. RTS. L. REV. 95, 127-28 (2002) (discussing developments in the law of internally displaced persons that are relevant to the issue of arbitrary forced relocation).

40. See *Guiding Principles*, *supra* note 36, princ. 6(1) (stating 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”); see also KALIN, *supra* note 32, at 17 (commenting on how large-scale development projects can significantly contribute to the realization of human rights, but also lead to possible involuntary displacement and resettlement). The language of the Guiding Principles ensures that development cannot be used as an argument to disguise discrimination or any other human rights violation by stressing that “development-related displacement is permissible only when compelling and overriding public interests justify this measure.” *Id.* Thus, development-related displacement is allowed only when the requirements of “necessity and proportionality” are met. *Id.*

41. See *Guiding Principles*, *supra* note 36, princ. 7 (allowing displacement if “no alternative exist[s],” but noting that “all measures shall be taken to minimize displacement and its adverse effects”).

42. See Bjorn Pettersson, *Development-Induced Displacement: Internal Affair or International Human Rights Issue?*, FORCED MIGRATION REV., Jan. 2002, at 16-19 (stressing that India should be encouraged to appropriately address the issue of those who have had their rights violated through forced displacement), available at <http://www.fmreview.org/FMRpdfs/FMR12/fmr12full.pdf> (last visited Feb. 19, 2005).

In addition, Principle 9 of the Guiding Principles imposes particular responsibilities on states to prevent the displacement of tribal populations, indigenous peoples, and other such groups, given their unique reliance on and connection to their lands.⁴³ Finally, it is recognized that the Guiding Principles provide a valuable foundation for the further development of legal norms and principles addressing issues of how the displaced are compensated and reallocated land.⁴⁴

2. International Covenant on Economic, Social, and Cultural Rights

In the event that the international community is not convinced that development-induced displacement amounts to a human rights violation under the Guiding Principles, the International Covenant on Economic Social and Cultural Rights ("ICESCR"), which India ratified on April 10, 1979, may provide another mechanism for holding India accountable.⁴⁵ The ICESCR requires states to recognize the right of all human beings to work⁴⁶ and the right to an adequate standard of living, including adequate food, clothing, and housing.⁴⁷ State actions which forcibly remove citizens from their homes directly and immediately endanger these rights.⁴⁸

43. See *Guiding Principles*, *supra* note 36, princ. 9 (suggesting that where displacement of tribal populations does occur, it is of critical importance that comparable alternative accommodation sites be provided). This is in view of the fact that tribes generally lack land titles to claim ownership of the lands they previously occupied. *Id.*; see also Sidney L. Harring, "God Gave Us This Land": *The Ovahimba, the Proposed Epupa Dam, the Independent Namibian State, and Law and Development in Africa*, 14 GEO. INT'L ENVTL. L. REV. 35, 75-76 (2001) (describing the impossible burden on tribal persons to gain land title because they often lack access to lawyers and land registration offices).

44. See ROBERTA COHEN & FRANCIS M. DENG, *MASSSES IN FLIGHT: THE GLOBAL CRISIS OF INTERNAL DISPLACEMENT* 258 (Brookings Institution Press 1998) (discussing the role of the Guiding Principles in the international community and the goal of preventing internal displacement through eventual acceptance of the principles as legally binding).

45. See International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (recognizing that all human beings have a right to enjoy economic, social, cultural, civil, and political rights).

46. See *id.* art. 6 (mandating that the State safeguard the right of everyone to work in an area that he or she freely chooses or accepts).

47. See *id.* art. 11(1) (recognizing, in addition, the right to the continuous improvement of living conditions); see also *The Right to Adequate Housing: General Comment 4*, U.N. ESCOR Comm. on Econ., Soc. & Cultural Rts., 6th

Furthermore, the U.N. Committee on Economic, Social and Cultural Rights ("Committee") declared that a state has *prima facie* failed to fulfill its obligations under the ICESCR unless it can demonstrate that it utilized all available resources in an effort to secure these rights for its citizens.⁴⁹ The Committee also stated that forced evictions are in direct contradiction with ICESCR requirements, and are only justified in the most extraordinary circumstances and in accordance with the relevant principles of international law.⁵⁰ While the ICESCR provides substantive rights, effective assistance to IDPs is limited by concepts of national sovereignty⁵¹ and situations in which states are unwilling to guarantee its citizens the ICESCR's protections.⁵²

Sess., ¶ 8, Annex III, at 114, U.N. Doc. E/1992/23 (1991) [hereinafter *ICESCR General Comment 4*] (outlining seven basic components of the right to adequate housing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy), available at <http://www1.umn.edu/humanrts/gencomm/epcomm4.htm> (last visited Feb. 19, 2005). The Committee stated that the right to housing should be seen as the right to live somewhere in "security, peace and dignity" and not merely to have a roof over one's head. *Id.* ¶ 7.

48. See Elizabeth E. Ruddick, Note, *The Continuing Constraint of Sovereignty: International Law, International Protection, and the Internally Displaced*, 77 B.U. L. REV. 429, 480 (1997) (noting that the plight of IDPs is often due to their own government's actions and forcible removal).

49. See *The Nature of States' Parties Obligations: General Comment 3*, U.N. ESCOR Comm. on Econ., Soc. & Cultural Rts., 5th Sess., ¶ 10, Annex III, at 86, U.N. Doc. E/1991/23 (1991) (providing additional comments to the ICESCR to clarify state obligations), available at <http://www1.umn.edu/humanrts/gencomm/epcomm3.htm> (last visited Feb. 19, 2005).

50. See *ICESCR General Comment 4*, *supra* note 47, ¶ 18 (providing guidance for implementing the rights of the ICESCR through international cooperation).

51. See *Internally Displaced Persons: Report of the Representative of the Secretary-General, Mr. Francis Deng, Submitted Pursuant to the Commission on Human Rights Resolution 1993/95 and 1994/68*, U.N. ESCOR Comm. on Hum. Rts., 51st Sess., Item 11(d), ¶ 14, U.N. Doc. E/CN.4/1995/50 (1995) (describing the internally displaced as living "under the adverse conditions of a hostile domestic environment, where their access to protection and assistance is constrained by national sovereignty").

52. See *id.* ¶ 38 (commenting on the unwillingness of most governments to undertake measures for improving the situation of the internally displaced).

3. International Labor Convention 107

In the last fifty years, the concern for the welfare of tribal communities has increased and international human rights institutions are beginning to acknowledge these groups' unique rights to their environment, lands, and resources.⁵³ The 1957 International Labor Organization Convention 107 ("ILO Convention 107"), ratified by India on September 29, 1958, was the first legal instrument to specifically provide for such rights.⁵⁴ Article 12(1) of ILO Convention 107 states that indigenous people "shall not be removed without their free consent from their habitual territories."⁵⁵

While ILO Convention 107 goes reasonably far in promoting indigenous peoples' right to their territories, it accepts forced resettlement if necessary to secure national economic development.⁵⁶ Even if ILO Convention 107 accepts forced resettlement for such

53. See Bhat Sairam, Center for Environmental Law Education, Research, and Advocacy, *Human Rights Approaches to Tribal Travails: A Note* (noting that indigenous people were not recognized in international law and had no right to self determination before 1949), at <http://www.ceeraindia.org/documents/tribalrights.htm> (last visited Feb. 19, 2005).

54. See International Labor Organization Convention 107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, Jun. 26, 1957, 328 U.N.T.S. 247 [hereinafter ILO Convention 107] (containing a number of provisions on indigenous territorial rights); see also Maria Stavroupoulou, *Indigenous Peoples Displaced from their Environment: Is there Adequate Protection?*, 5 COLO. J. INT'L ENVTL. L. & POL'Y 105, 114 (1994) (noting that ILO Convention 107 was eventually replaced in 1989 by ILO Convention 169, which India did not adopt). ILO Convention 107 is still in force for India because of Article 36(2) of ILO Convention 107, which states that the "Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention." ILO Convention 107, *supra*, art. 36(2).

55. ILO Convention 107, *supra* note 54, art. 12(1) (laying down a general prohibition on the removal of indigenous peoples from their lands except in specified cases).

56. See *id.* (allowing removal of indigenous populations only to further national security, economic development, or the health of the indigenous populations); see also Lee Swepston, *A New Step in the International Law on Indigenous and Tribal Peoples: ILO Convention No. 169 of 1989*, 15 OKLA. CITY U. L. REV. 677, 705 (1990) (commenting that Article 12(1) of ILO Convention 107 received great criticism because of its inadequate protection against removal in cases where the government proffers any reason it deems worthwhile, and for its susceptibility to abuse).

reasons, Articles 12(2) and 12(3) provide land of quality at least equal to that of the land previously occupied by the displaced,⁵⁷ as well as full compensation for any resulting loss or injury.⁵⁸

B. INDIA'S DOMESTIC FRAMEWORK

1. *The Indian Constitution and the Rights to Livelihood and Housing*

Lacking an international legal and institutional system of protection to depend on, IDPs must rely on their own country's laws and policies with regard to resettlement and rehabilitation.⁵⁹ However, there are no separate Indian laws pertaining specifically to the state's legal responsibility to its internally displaced.⁶⁰ Thus, IDPs must turn to the Fundamental Rights provisions of the Constitution and the writ jurisdiction of the courts for recourse.⁶¹ In fact, the Indian Supreme Court has advanced human rights in India by implementing the principles of international declarations and treaties in support of the Constitution.⁶²

57. See ILO Convention 107, *supra* note 54, art. 12(2) (stating that replacement land should be suitable to provide for the indigenous population's present needs and future development).

58. See *id.* arts. 12(2)-(3) (providing compensation in money or in kind to the indigenous populations, even if chances of alternative employment exist).

59. See Jeremy Levitt, *Conflict Prevention, Management, and Resolution: Africa - Regional Strategies for the Prevention of Displacement and Protection of Displaced Persons: The Cases of the OAU, ECOWAS, SADC, and IGAD*, 11 DUKE J. COMP. & INT'L L. 39, 78 (2001) (discussing the responses to internal displacement in African nations, where the international community failed to extend adequate resources to protect the rights and well-being of displaced populations, a failure that has resulted in great suffering in many cases).

60. See PARASURAMAN, *supra* note 13, at 41 (contending that India's laws of eminent domain came about at a time when the state played a negligible role in improving the public's welfare).

61. See Rangachari et al., *supra* note 6, at 36 (discussing mechanisms available to Indians for securing their constitutional rights). The Protection of Human Rights Act 1993 allowed for the creation of the National Human Rights Commission, which plays a vital role in investigating and protecting human rights. *Id.* Members of Scheduled Caste and Scheduled Tribes have an additional avenue for redress, and may approach the National Commission for Scheduled Castes and Scheduled Tribes for support. *Id.* While these institutions are of symbolic importance, they play no statutory role in the context of the SSP situation. *Id.*

62. See Sripati, *supra* note 21, at 468 (commenting on the influence of international human rights law on Indian constitutional jurisprudence).

One of the most important provisions pertaining to human rights in the Constitution is Article 21, which provides the framework for securing the right to life.⁶³ In addition, Article 39 directs the state to secure its citizens with the “right to an adequate means of livelihood.”⁶⁴ In a related provision, Article 41 articulates that the state shall “make effective provision for securing the right to work.”⁶⁵

In an unprecedented decision, the Indian Supreme Court expanded the socio-economic dimension of Article 21 in *Olga Tellis v. Bombay Municipal Corporation* and provided persons who are forcibly evicted with a more meaningful interpretation of the right to life.⁶⁶ In this case, Bombay sidewalk dwellers argued that the construction of an expressway would destroy both their home and workplace, and would result in the loss of their means of livelihood and deprive them of their right to life.⁶⁷ The Court agreed and stated that any person deprived of his or her right to an adequate livelihood or right to work can challenge the deprivation as offending Article 21’s right to life.⁶⁸

63. See INDIA CONST. art. 21 (stating that “no person shall be deprived of his life or personal liberty except according to procedure established by law”); see also *id.* pmbl. (requiring policies to balance “social and economic” rights).

64. See *id.* art. 39 (proclaiming that the state should direct its policy toward securing, among other things, a right to adequate means of livelihood for men and women equally, and equal pay for equal work for both men and women).

65. *Id.* art. 41 (conveying that the state’s obligations are limited by its “economic capacity” and “development”).

66. See *Olga Tellis v. Bombay Mun. Corp.*, (1986) 2 S.C.R. 51, 83 (holding that the right to life conferred by Article 21 includes the right to livelihood and that eviction from a sidewalk dwelling constitutes a deprivation of livelihood). See generally Jeremy Cooper, *Poverty and Constitutional Justice: The Indian Experience*, 44 MERCER L. REV. 611, 611-12 (1993) (claiming that justices in India should not pursue a narrow inquiry into the rule of law, but rather they should look at how such laws can be applied to avoid harsh, unjust results).

67. See *Olga Tellis*, 2 S.C.R. at 80 (using the Indian Constitution’s Directive Principles to expand the Fundamental Rights of the pavement dwellers).

68. See *id.* at 79-80 (theorizing that unless the right to livelihood is protected as part of the right to life, continued, systematic deprivations of the pavement dwellers’ right to livelihood would result in the wholesale denial of their right to life). The Court responded by halting all evictions for four years after the petition was filed. *Id.* at 98.

In addition to interpreting Article 21 as recognizing the right to livelihood, the Indian Supreme Court in *Mullin v. Union Territory of Delhi* elaborated on the right to adequate shelter as part of the all-encompassing right to life.⁶⁹ Eight years later, the Court reaffirmed this view in *Ram Prasad v. Chairman, Bombay Port Trust* when it held that the right to life prohibited the eviction of slum dweller families unless the Bombay Port Trust provided them with alternative accommodations.⁷⁰

2. The Land Acquisition Act

Provisions of the Land Acquisition Act ("LAA"), which the government uses to implement large projects such as the SSP, unfortunately nullify the impact of these landmark decisions.⁷¹ The most significant principle underlying the LAA is the doctrine of eminent domain, according to which the state can acquire land from private citizens for public purposes.⁷² The state's powerful right of eminent domain is nearly impossible to challenge legally, and thus the displaced are left with no mechanism by which to resist the state's acquisition of their land.⁷³

69. See *Mullin v. Union Territory of Delhi*, (1981) 2 S.C.R. 516, 529 (building upon the idea that the right to life includes the right to live with human dignity, and that such a right can only be attained with the receipt of adequate nutrition, clothing, and shelter).

70. See *Ram Prasad v. Chairman, Bombay Port Trust*, A.I.R. 1989 S.C. 1306 (India) (holding that public authorities cannot evict families living in slum dwellings unless they are provided with alternative sites).

71. See Land Acquisition Act, 1894 (India) (providing the statutory statement of the Indian government's power of eminent domain); see also IYER, *supra* note 3, at 147 (providing an overview of the policies, institutions, and procedures which make massive acquisition of land and the subsequent displacement of people possible).

72. See Land Acquisition Act, pt. II, Acquisition (vesting the state with absolute control over the land within its territory).

73. See Rangachari et al., *supra* note 6, at 35 (discussing the recent introduction of a statutory requirement for a public hearing in relation to projects such as dams, but noting that such rights are not exercised with any procedural regularity); see also PARASURAMAN, *supra* note 13, at 41-42 (describing how the LAA was originally used as a tool of exploitation by the British during their colonial rule of India, and explaining its continued application in ways that further the interests of powerful groups).

The LAA specifies cash compensation at market value for the loss of individually-owned land, but little else.⁷⁴ Rehabilitation, which is defined as the process of reconstructing the livelihood of displaced persons, is not required under the LAA.⁷⁵ Furthermore, the government takes the position that rehabilitation is not a prime consideration when acquiring land for a "public purpose."⁷⁶ Finally, the LAA provides that the Indian Supreme Court is the only appellate forum for individuals whose land is to be acquired, an assertion which significantly curtails the rights of displaced persons.⁷⁷

3. *The Narmada Water Disputes Tribunal Award*

In light of the immensity of the SSP and the magnitude of its impact on local populations, the Indian government established the Narmada Water Disputes Tribunal Award ("NWDT Award") in 1979.⁷⁸ The NWDT Award sets the policy framework for resettlement and rehabilitation associated with the SSP.⁷⁹ According to the Supreme Court, the NWDT Award is the benchmark for resettlement and rehabilitation, and the high court has held that it is binding on the three involved states in western India.⁸⁰

74. See Land Acquisition Act, pt. III(23) (laying out a limited legal mandate regarding what matters should be considered in determining compensation).

75. See Rangachari et al., *supra* note 6, at 35 (defining the Land Acquisition Act, and its broad range of powers, as the "instrument of displacement").

76. See Lama, *supra* note 17, at 25 (noting that the Indian government refused to make its definition of "public purpose" available to the public).

77. See The Land Acquisition Act, pt. VIII(53) (asserting that all appeals shall lie before the Supreme Court subject to the provisions of the Code of Civil Procedure); see also Lama, *supra* note 17, at 25 (describing the process of displacement as silent, where the disenfranchised are given little opportunity to voice their disapproval of the SSP project).

78. See Final Order and Decision of the Narmada Water Disputes Tribunal Award (Dec. 12, 1979) [hereinafter Narmada Tribunal Award] (laying out the scope of the final order in sixteen clauses), *available at* <http://www.narmada.org/nvdp.dams/nwdt.final.award.pdf> (last visited Feb. 19, 2005).

79. See *id.* cl. XI (providing for land compensation, non-land compensation, and civic amenities).

80. See DIVAN & ROSENCRAZ, *supra* note 5, at 302 (commenting on the history of the SSP and the Narmada Water Disputes Tribunal). The NWDT,

The primary purpose of the NWDT Award is to establish conditions regarding the resettlement and rehabilitation of those displaced by SSP submergence.⁸¹ One of the conditions provides that relief is only available for "Project Affected Persons" ("PAPs"), who are defined as families that lose their legally owned land to the reservoirs.⁸² The NWDT Award does not recognize families that lose their land to canals, suffer secondary displacement due to loss of their land to resettlement sites, or those that are affected downstream of the SSP.⁸³

The resettlement policy is based on the principle of "land for land."⁸⁴ One of the most important specifications of the NWDT Award asserts that the livelihoods of landholders must be restored by provision of alternative land instead of the cash compensation that is awarded under the LAA.⁸⁵ The NWDT Award also mandates that affected populations must be rehabilitated as communities⁸⁶ on

established in 1969 under the Interstate Water Disputes Act of 1956, resolved conflicts between the beneficiary states of Madhya Pradesh, Maharashtra, Gujarat, and Rajasthan. *Id.* Final preparation and work on the SSP commenced when the NWDT approved its final order in 1978. *Id.*

81. See Narmada Tribunal Award, *supra* note 78, cls. I-IV (determining the allocation of Narmada River waters between various states, fixing heights for the Sardar Sarovar dams, and establishing parameters for canal levels and gradients).

82. See *id.* cl. XI(I) (providing category-specific resettlement and rehabilitation policies); see also Patrick McCully, International Rivers Network, *Sardar Sarovar Project (SSP): An Overview* (May 25, 1994) (explaining that displaced families are called Project Affected Persons, or PAPs, and are actually a family unit rather than one person), available at <http://www.narmada.org/sardar-sarovar/irnoverview940525.html> (last visited Feb. 5, 2005).

83. See McCully, *supra* note 82 (noting that the Canal Affected Families ("CAFs"), who are not recognized as PAPs, are ineligible for the same compensation package as the displaced people living in the reservoir areas). An estimated ten percent of the CAFs are tribal people. *Id.*

84. Narmada Tribunal Award, *supra* note 78, cl. XI(II) (detailing the areas of land to be acquired for the SSP under the provisions of the LAA). If more than seventy-five percent of a person's land of contiguous holding is compulsorily acquired, such person shall have the option to compel compulsory acquisition of the entire contiguous holding. *Id.* cl. XI(II)(i).

85. See *id.* cl. XI(IV)(vii) (ordering that agricultural plots equal in size to the holdings prior to displacement would be made available to all displaced families who lost more than twenty-five percent of their holdings).

86. See *id.* cl. XI(IV)(i) (ruling that the SSP authorities must relocate villages as a community). According to the NWDT Award, SSP authorities are also

irrigable land of their choice in the state of their choice.⁸⁷ Additionally, the NWDT Award specifies that resettlement must precede submergence by at least twelve months.⁸⁸ However, the NWDT Award does not provide for tribal populations that cannot claim legal title to land despite their customary rights to the land and their cultivation of the land for generations.⁸⁹ In addition, the NWDT Award does not mention the status of those who are landless.⁹⁰

II. ANALYSIS

A. THE FORCED DISPLACEMENT OF PERSONS AS A RESULT OF THE SARDAR SAROVAR PROJECT IS UNACCEPTABLE UNDER CURRENT INTERNATIONAL LAWS AND NORMS

Given the lack of a comprehensive legal framework for resettlement and rehabilitation in the Indian context, the Guiding Principles, ICESCR, and ILO Convention 107 can provide a starting point for protecting displaced populations in India.⁹¹ Particularly, the Indian government must comply with the standards laid out in the ICESCR and ILO Convention 107 in the planning and

required to set up "rehabilitation villages" with all the amenities necessary for the village and its residents. *Id.* cl. IV(II)(iv).

87. *See id.* cl. XI(IV)(2)(ii) (recognizing that the project-affected people have a right to choose between Gujarat and their home states with regards to resettlement and rehabilitation).

88. *See id.* cl. XI(IV)(2)(iv) (adding that SSP authorities must first offer to rehabilitate the displaced people in their own territory before offering land in a neighboring region).

89. *See* INDIGENOUS RIGHTS, *supra* note 2, at 112-14 (asserting that project authorities gave little or no thought to how the landless would be rehabilitated).

90. *See* Manoj Saranathan & Nagini Prasad, *The World Bank, Multi-National Corporations, and State Governments: The Narmada Struggle Continues*, 3 ECON. JUST. NEWS ONLINE., Apr. 2000, at 1 (explaining that protests were mounted by nongovernmental organizations against the Gujarat government in an attempt to better the resettlement policies for the landless), at <http://www.50years.org/cms/ejn/story/180> (last visited Feb. 19, 2005).

91. *See* PARASURAMAN, *supra* note 13, at 48-49 (discussing the problems of displacement in the Indian context where tribal people usually lack formal rights and the ability to master the complex procedures for reparation).

implementation of any development project in India.⁹² However, India's resettlement and rehabilitation of the people displaced by the SSP has been unsuccessful⁹³ and inconsistent with all three international instruments.⁹⁴ The Indian government has failed to provide sufficient compensation and proper resettlement, and has failed to show respect for the rights of tribal populations.⁹⁵

According to Principle 7 of the Guiding Principles and Article 12 of ILO Convention 107, individuals displaced by the SSP should be guaranteed alternative accommodations and adequate compensation.⁹⁶ However, a large number of people directly affected by the SSP, whose homes and land were acquired for canals and dykes, are not considered official PAPs, and are therefore ineligible for alternative housing or compensation.⁹⁷ Even among those displaced who are officially recognized as PAPs, authorities have failed to provide adequate replacement land.⁹⁸ In fact, land that is

92. See Letter from Miloon Kothari, United Nations Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, to Shri Atal Bihari Vajpayee, Prime Minister of India (Aug. 10, 2001) [hereinafter U.N. Special Rapporteur Letter] (outlining the nature of human rights violations in the Sardar Sarovar Project), available at <http://indiatgether.org/stories/aid/lettoPM.htm> (last visited Feb. 19, 2004).

93. See THE CASE AGAINST THE GLOBAL ECONOMY AND FOR A TURN TOWARD THE LOCAL 8-10, 13-14 (Jerry Mander & Edward Goldsmith eds., Sierra Club Books 1996) [hereinafter GLOBAL ECONOMY] (suggesting that India's efforts to engage in economic development were disappointing from the start).

94. See HUM. RTS. WATCH, WORLD REPORT 2003: INDIA (2004) (commenting on India's successes and failures in the protection of human rights), available at <http://www.hrw.org/wr2k3/asia6.html> (last visited Feb. 19, 2005).

95. See COHEN & DENG, *supra* note 44, at 16-17 (arguing that the construction of dams can be considered a "man-made disaster" and therefore those displaced by projects such as the SSP fall within the definition in the Guiding Principles).

96. See discussion *supra* notes 41-42, 57-58 and accompanying text (advocating for the protection of vulnerable individuals displaced by their own governments' actions).

97. See Rangachari et al., *supra* note 6, at 110-18 (discussing both the beneficial and adverse social impacts caused by large dams). Dams are beneficial in both controlling floods and improving sanitation and hygiene, but their most significant adverse social impact is the resulting forceful displacement of populations. *Id.*

98. See MALAVIKA VARTAK, INTERNATIONAL RIVERS NETWORK, NO LAND, NO JUSTICE: REPORT OF A FACT-FINDING TOUR TO THE SARDAR SAROVAR DAM-AFFECTED AREAS OF THE NARMADA VALLEY, JULY 2001 12 (2002) (noting that

provided is often unsuitable for farming, far from the locations desired by the displaced, and void of basic amenities such as drinking water, schools, and health care.⁹⁹ The SSP's failure to provide satisfactory accommodation and compensation to the displaced is inconsistent with the spirit of recognized international norms.¹⁰⁰

Furthermore, Principle 9 of the Guiding Principles and ILO Convention 107 require that SSP implementing authorities take special care to protect against the displacement of indigenous people and others with special attachment to the land.¹⁰¹ Yet the standard of living for the majority of displaced tribal people has significantly deteriorated due to their loss of access to relied-upon forests and common pastures, and to the grossly exploitive conditions in agricultural and manual labor they are forced to engage in.¹⁰²

Nonetheless, the practice of denying compensation for jointly held property is only part of the larger problem of pressuring indigenous people to accept cash compensation for their individually owned land.¹⁰³ This method of compensation is particularly devastating for tribal populations because they lack experience conducting cash transactions, as well as the diversified skills needed to prosper in a

appeals to project authorities for agriculturally viable land have been unsuccessful).

99. See *id.* at 13, 17 (reporting on the random allocation of cultivable land and the resulting conflicts within the displaced communities).

100. See Ravi Hemadri et al., *Dams, Displacement, Policy and Law in India*, in WORLD COMMISSION ON DAMS THEMATIC REVIEW I.3 xxii (2000) (noting that project-affected tribal people's problems are compounded by special vulnerabilities such as class, caste, gender, and age, all which increase the likelihood that they end up without assets, unemployed, and indentured), available at <http://www.dams.org/docs/kbase/contrib/soc213.pdf> (last visited Feb. 19, 2005).

101. See discussion *supra* notes 43, 54-58 and accompanying text (articulating the special protections needed by tribal populations due to their marginalized status).

102. See Amrita Patwardhan, *Dams and Tribal People in India*, in WORLD COMMISSION ON DAMS THEMATIC REVIEW I.2 9-14 (2000) (noting that tribal lands are usually in remote areas, and lack both basic infrastructure and updated accurate land records), available at http://www.wca-infonet.org/servlet/BinaryDownloaderServlet?filename=1066300797914_India.pdf&refID=114962 (last visited Feb. 19, 2005).

103. See *id.* at 15 (describing the vulnerability associated with displacement).

market economy.¹⁰⁴ This practice of awarding cash compensation in circumstances in which such compensation severely disadvantages the displaced tribal people constitutes a violation of India's commitment under ILO Convention 107.¹⁰⁵

B. INDIA'S EXISTING LAWS FAIL TO PROTECT THE INTERNALLY
DISPLACED, WHO ARE LEFT WITHOUT LEGAL RECOURSE IN THE
ABSENCE OF STATE AND NATIONAL LEGISLATION ON
RESETTLEMENT AND REHABILITATION

According to international law principles of sovereignty and non-intervention, the primary responsibility for the protection and assistance of India's IDPs rests with the national government.¹⁰⁶ In the case of the SSP, this principle presents unique and difficult problems because past and current events demonstrate that IDPs often cannot rely on their governments for protection.¹⁰⁷ This result is

104. See COMMITTEE TO ASSIST THE RESETTLEMENT AND REHABILITATION OF THE SARDAR SAROVAR PROJECT-AFFECTED PERSONS, REPORT OF THE DAUD COMMITTEE ON THE STATUS OF REHABILITATION IN MAHARASHTRA 27 (2001) [hereinafter DAUD REPORT] (observing that tribal people have been denied their land rights and provided with inadequate resettlement although ILO Convention 107 mandates full compensation for any loss or injury suffered from removal), available at <http://www.narmada.org/sardar-sarovar/daud.report.html> (last visited Feb. 5, 2005).

105. See INDIGENOUS RIGHTS, *supra* note 2, at 109 (discussing the adverse effects and unintended consequences of development on India's indigenous people). In India, the cost of the SSP "is being paid by the people who are least able to afford it and who will benefit the least from the fruits of development." *Id.*

106. See NORWEGIAN REFUGEE COUNCIL, *supra* note 9, at 104 (asserting that inter-governmental regional organizations such as the Association of South-East Asian Nations ("ASEAN") and the South Asian Association for Regional Cooperation ("SAARC") are hesitant to discuss problems of internal displacement at the regional level due to their allegiance to ideas of state sovereignty and non-interference).

107. See Malinda M. Schmiechen, *Parallel Lives, Uneven Justice: An Analysis of Rights, Protection and Redress for Refugee and Internally Displaced Women in Camps*, 22 ST. LOUIS U. PUB. L. REV. 473, 475 (2003) (noting that a state must usually give its consent before a U.N. agency or other international humanitarian organizations can intervene and provide assistance to the state's internally displaced).

attributable to the actions of the Indian government, which is responsible for their displacement and the violation of their rights.¹⁰⁸

However, India lacks a comprehensive legal framework¹⁰⁹ to define the rights of the displaced, the obligations of the agencies causing the displacement, and the solutions necessary for rebuilding the communities and livelihoods of the people affected by the SSP.¹¹⁰ Due to this absence of state or national laws and policies, India's efforts to resettle its displaced repeatedly fail, and the SSP-affected communities are forced to deal with sudden evictions, insufficient compensation, and the loss of their assets and livelihoods.¹¹¹

Despite the fact that the SSP has produced massive displacement and associated harms, the government of India has yet to implement national and state legislation to protect those who encounter displacement against their will.¹¹² Without statutory resettlement and rehabilitation laws, project-implementing authorities and state governments are under no legal obligation to integrate

108. See Julie Mertus, *The State and the Post-Cold War Refugee Regime: New Model, New Questions*, 20 MICH. J. INT'L L. 59, 67 (1998) (highlighting the difficulty in providing assistance to the internally displaced because the government responsible for causing the displacement is assumed to be the entity that would provide the necessary protection).

109. See PARASURAMAN, *supra* note 13, at 20-21 (relaying an Indian senior official's explanation as to why India lacks a national resettlement and rehabilitation policy). Even though resettlement is regarded as a state-level matter, state officials argue that because the Land Acquisition Act is a national law, legislation that regulates displacement should also find its authority from a national body of law. *Id.* at 21.

110. See *id.* at 20-23 (contending that existing national laws fail to provide an adequate framework for development-oriented resettlement and that equitable development requires India to develop a new, more responsive structure in order to plan and carry out involuntary resettlement in an acceptable manner).

111. See Hemadri et al., *supra* note 100, at iv-v, xiii-xvii (recounting numerous case studies that the World Commission on Dams commissioned in which the displaced did not receive alternate cultivable lands and faced traumatic forced and delayed relocation).

112. See PARASURAMAN, *supra* note 13, at 81 (remarking that prior to August 1995, only two state governments had created policies for the rehabilitation of project-affected people). The state policies of Maharashtra and Madhya Pradesh only address displacement caused by irrigation projects, and not other categories of development projects such as mines, highways, and nuclear and defense installations. *Id.*

comprehensive resettlement or rehabilitation planning into the development of the SSP.¹¹³ This lack of legal responsibility on the part of the government perpetuates a system in which deplorable practices govern the implementation of the SSP in a system where the displaced person's rights are undefined and unprotected.¹¹⁴ India's previous experience with dams is unsettling,¹¹⁵ and the future for the already displaced and potentially displaced communities will remain undeniably bleak until the government provides legally enforceable rights.¹¹⁶

C. INDIA'S CURRENT SCHEME FOR IMPLEMENTING THE SARDAR SAROVAR PROJECT VIOLATES HUMAN RIGHTS

The magnitude of the displacement and the government's failure to rehabilitate those affected underscores the need to adopt a human rights perspective in considering the impact of the SSP on affected populations.¹¹⁷ Numerous reports confirm that state and local governments have made very little effort to resettle and

113. See Hemadri et al., *supra* note 100, at viii (finding that ad hoc remedies, in the absence of comprehensive policies, fail to provide the displaced with adequate rehabilitation, and project authorities instead focus primarily on relocating the displaced).

114. See PARASURAMAN, *supra* note 13, at 17 (discussing India's discouraging historical record with respect to displacement). Researchers of India's resettlement programs have found that three out of every four displaced persons became poorer as a result of the country's development programs. *Id.*

115. See Shripad Dharmadhikary, *Implementing the Report of the World Commission on Dams: A Case Study of the Narmada Valley in India*, 16 AM. U. INT'L L. REV. 1591, 1608 (2001) (discussing India's past performance in dam building). The Bargi dam was one of the earliest of the large dams completed on the main stem of the Narmada River. *Id.* The project began without a rehabilitation strategy, and consequently, only those who possessed legal title to land received any cash compensation. *Id.* The cash compensation was too meager to purchase alternative lands, and many ended up in urban slums as manual laborers. *Id.*

116. See PARASURAMAN, *supra* note 13, at 17 (posing the question of whether large development projects are justified on grounds that they reduce poverty when they simultaneously cause impoverishment).

117. See Raul S. Sanchez, *To the World Commission on Dams: Don't Forget the Law, and Don't Forget Human Rights—Lessons from the U.S.-Mexico Border*, 30 U. MIAMI INTER-AM. L. REV. 629, 649 (1999) (arguing that employing a human rights approach when states engage in actions that result in environmental trauma may provide a potential mechanism by which to hold states accountable).

rehabilitate.¹¹⁸ In 1994, the government of India admitted that ten million people displaced by dams and other developmental projects were still “awaiting rehabilitation,” a figure regarded as tremendously conservative by most independent researchers.¹¹⁹

*1. India's Land Acquisition Act Requires Legal Title
and Focuses on Monetary Compensation,
Requirements That Violate the Right to Livelihood*

A closer look at the LAA highlights the government's failure to protect its citizens from the hardships and distress caused by the SSP.¹²⁰ Under the LAA, displaced persons receive compensation only if they can present legal title to their land.¹²¹ This provision ignores the fact that the vast majority of displaced people do not possess legal title to land.¹²² The limited scope of remedies is particularly harsh for tribal populations because they often lack formal title, a reality that consequentially increases their likelihood of becoming landless.¹²³

118. See, e.g., VARTAK, *supra* note 98 (finding very little progress in the resettlement and rehabilitation policies since the Supreme Court ordered construction on the dam to continue in 2000).

119. See Pettersson, *supra* note 42, at 16-18 (deconstructing the rhetoric used to discuss development-induced displacement in order to challenge the assumptions used to justify large-scale forced displacement).

120. See PARASURAMAN, *supra* note 13, at 42 (discussing the feebleness of the Constitution when its provisions overlap with the LAA, and the reality that tribal people's rights disappear when the LAA comes into play). There is no state definition of “public purpose” under which one can acquire land; thus the state is free to determine when a particular “public purpose” is more imperative than the property rights of an individual or a community. *Id.* at 43.

121. See Rangachari et al., *supra* note 6, at 111-14 (summarizing the community's loss of access to areas where no one in the community holds formal title—such as common grasslands, forests, wetlands, and other natural resources—areas from which the entire community derived subsistence and income).

122. See *id.* at 111 (adding that of the forty-seven projects in the study, only two acknowledged the value of common property resources and made attempts to compensate for them).

123. See PARASURAMAN, *supra* note 13, at 45 (discussing the loss of land as the most critical reason why displaced persons in India become impoverished after being removed from their homes).

Another provision of the LAA limits compensation to land that is individually owned, and thus community assets do not merit compensation under the LAA.¹²⁴ However, community assets like grazing grounds and forests are critical for the livelihood of many of the affected groups, especially tribal groups.¹²⁵ As a result, the LAA deprives indigenous people of their means of survival because it recognizes only the rights of individuals with title to the land and denies the rights of those whose use of the land is customary.¹²⁶

According to *Olga Tellis*, the state threatens Article 21 of the Indian Constitution and its correlating right to livelihood when it displaces people from the land where they derive their livelihood.¹²⁷ In modern India, agricultural land remains the most significant asset, and makes up two-thirds of the value of all assets owned in rural locales.¹²⁸ Empirical studies indicate that the loss of land in rural India, without rehabilitation or assistance in finding alternatives, often drives families into poverty.¹²⁹ Thus, the LAA's focus on legal

124. See Smitu Kothari, *Whose Nation? The Displaced as Victims of Development*, ECON. & POL. WKLY., June 15, 1996 (finding that the LAA legalizes social violence through a process by which the displaced persons' rights are treated as mere claims, and where the displaced are forced to abandon their cultural systems and adapt to a market economy).

125. See *id.* (noting the lack of protection afforded to property held and maintained as a community).

126. See Patwardhan, *supra* note 102, at 9-10 (examining how existing laws and policies deny tribal people's customary rights over the land and deem them illegal "encroachers" on government land). Such practices cause tribes to suffer more. *Id.* For example, in Maharashtra, only 15.18 % of tribal families were granted land compared to 31.4 % of non-tribal families. *Id.*

127. See WORLD BANK, *THE ECONOMICS OF INVOLUNTARY RESETTLEMENT: QUESTIONS AND CHALLENGES 4* (Michael M. Cernea ed., 1990) (describing the fundamental goals for involuntary resettlement as "inclusive development," and having "resettlers" share in the benefits of development, "not just the pains").

128. See PARASURAMAN, *supra* note 13, at 44 (noting that according to 1996 figures, agriculture supports over two-thirds of India's people).

129. See *id.* at 44-45 (recognizing that development can bring substantial hardships and unfair consequences to those original occupants of the land); see also Anuradha Mittal, *Land Loss, Poverty and Hunger*, ALTERNET, Dec. 3, 2001 (commenting on the large number of people who migrate from rural areas into urban cities in search of work after becoming landless), available at <http://www.alternet.org/story.html?StoryID=12001> (last visited Feb. 19, 2005).

ownership of land is particularly harmful and clearly violates the right to livelihood.¹³⁰

The practice of providing compensation for land by way of cash payments (rather than land-for-land) has increased landlessness among tribal groups and other vulnerable populations.¹³¹ Under the LAA, compensation for acquired land and housing is paid at market value rather than replacement value.¹³² However, such a policy causes many to remain landless indefinitely because the amount of cash received rarely guarantees the replacement of the lost land.¹³³ Furthermore, such confiscation of land removes the core foundation upon which the displaced people build their social systems, commercial activities, and livelihoods.¹³⁴ Governments that are unable to fulfill their obligations under the land-for-land provision of the NWDT Award face the challenge of rehabilitating the displaced

130. See PARASURAMAN, *supra* note 13, at 44 (discussing seven identified dimensions of the risks of impoverishment which include landlessness, joblessness, homelessness, marginalization, food insecurity, morbidity, and social disarticulation).

131. See Hemadri et al., *supra* note 100, at xiii-xiv (explaining that only landowners who were familiar with the Land Acquisition Act's legal provisions and who had connections in the city took their cases to court, and those unaware of their limited legal rights forfeited their opportunity to appeal by accepting the initial compensation payment).

132. See Land Acquisition Act, 1894 (India) (stating that the price to be paid for the acquisition of agricultural land is based on sale prices averaged over the three years preceding notification); see also Hemadri et al., *supra* note 100, at xiii (summarizing the Fact-Finding Committee's discoveries related to the Srisaikam Project, another Indian dam on the Narmada River). The amount paid as compensation was five times less than the amount that displaced persons are required to pay to purchase agricultural land of equivalent quantity and quality. *Id.*

133. See PARASURAMAN, *supra* note 13, at 45 (noting that small and marginally profiting farmers experience the most serious deprivation because their previous economic situation was balancing perilously above the poverty line).

134. See *id.* at 46 (discussing the process of social disintegration, which is more difficult to quantify than landlessness and economic marginalization, but is nonetheless another very real and profound dilemma that the displaced face). Many of the affected people rely on kin-systems and tightly knit social networks. *Id.* However, displacement dismantles these support networks, which include multifaceted resources such as mutual help arrangements, labor exchange relationships, child-care reciprocity, and food borrowing. *Id.*

by securing sustainable non-land-based livelihoods.¹³⁵ Until India meets this challenge, the SSP's use of the Land Acquisition Act will continue to violate the right to livelihood.¹³⁶

2. The NWDT Award's Narrow Definition of Project-Affected Persons is Flawed and Violates the Right to Housing

The SSP's current scheme of execution is particularly harmful to displaced persons who do not fall under the definition of PAPs.¹³⁷ Officially recognized PAPs, according to the NWDT Award, are only those whose land is submerged.¹³⁸ Given the fact that the SSP causes significant displacement near canals and downstream areas, the criteria for determining which IDPs qualify for compensation must be broader and more inclusive.¹³⁹

Sadly, the Indian government treats such displacement differently, and the large number of displaced people living near the canals or in downstream areas will not receive compensation.¹⁴⁰ Although they are also victims of forced evictions due to SSP construction, they are left homeless because they do not meet the criteria to be considered

135. See Lama, *supra* note 17, at 25 (explaining rehabilitation as the process by which displaced persons' livelihoods are reconstructed).

136. See Hemadri et al., *supra* note 100, at xx (criticizing India for its reluctance to adopt and implement a land-for-land policy, and its failure to provide alternative livelihoods).

137. See *id.* at xlv-xlv (explaining the urgent need for project authorities to entitle people displaced by the SSP canals and downstream affects to the same benefits as those dispossessed due to the reservoir).

138. See SANJAY SANGVAI, *THE RIVER AND LIFE: PEOPLE'S STRUGGLE IN THE NARMADA VALLEY* 103 (2000) (observing that SSP-implementing authorities are not monitoring the plight of the non-reservoir affected people).

139. See Patwardhan, *supra* note 102, at 26 (suggesting that all persons who are adversely affected by the SSP should fall under the definition of project-affected persons and that they should all be provided with rehabilitation packages).

140. See U.N. Special Rapporteur Letter, *supra* note 92 (noting that many villagers are compelled to abandon the deficient lands at the rehabilitation sites and return to their original villages). The land allotted at the rehabilitation sites is either partly or fully uncultivable even when the displaced persons outlay significant expenses on their own to prepare the land for cultivation. *Id.* Furthermore, poor housing conditions and overcrowding are typical in camps for the internally displaced. *Id.*

official PAPs.¹⁴¹ Thus, the NWDT Award's limited definition of PAPs forcibly evicts people from their homes and violates the right to housing according to the Supreme Court's interpretation of Article 21 of the Constitution in *Ram Prasad*.¹⁴²

III. RECOMMENDATIONS

India has an opportunity to take a leading role in reforming the SSP to ensure more effective protection of internally displaced persons.¹⁴³ First, the Indian government should substitute rehabilitation for compensation as a means to care for people affected by the SSP.¹⁴⁴ Second, it is necessary to revise the eligibility requirements for rehabilitation.¹⁴⁵ Finally, India should develop a comprehensive legal structure to address development-induced displacement that is consistent with international norms and laws.¹⁴⁶

141. See *id.* (detailing that over 140,000 people will become homeless as a result of the SSP and the Indian government's deprivation of housing violates their rights under international law).

142. See *Ram Prasad v. Chairman, Bombay Port Trust*, A.I.R. 1989 S.C. 1306 (mandating that families displaced by the government have a right to be provided with alternative living arrangements).

143. See Ibrahim F. I. Shihata, *Legal Aspects of Involuntary Population Displacement*, in ANTHROPOLOGICAL APPROACHES TO INVOLUNTARY RESETTLEMENT: POLICY, PRACTICE, AND THEORY 39 (Michael M. Cernea & Scott E. Guggenheim eds., 1993) (discussing the former General Counsel of the World Bank's view that balanced development is achievable only when basic human rights are secured for the people who shoulder the adverse effects of development).

144. See discussion *infra* notes 147-51 and accompanying text (emphasizing that the current approach of merely providing cash compensation lacks a human rights focus).

145. See discussion *infra* notes 152-56 and accompanying text (asserting that the SSP should employ a human rights focus in its definition of project-affected persons).

146. See discussion *infra* notes 157-66 and accompanying text (reasoning that internally displaced persons in India need effective legal tools to defend against development projects such as the SSP); see also PARASURAMAN, *supra* note 13, at 252 (noting that any resettlement plan should monitor the welfare of the affected people for several years after relocation).

A. THE SSP SHOULD FOCUS ON REHABILITATING THE DISPLACED,
RATHER THAN PROVIDING COMPENSATION

As the SSP causes displacement and its accompanying harms, the Indian government should make every effort to minimize displacement and provide displaced persons with alternative land and shelter.¹⁴⁷ However, in situations in which it is not feasible for the government to provide land, rehabilitation—a process through which the displaced are made economically self-sufficient—should replace compensation.¹⁴⁸

Essentially, rehabilitation measures should prevent any decline in the displaced person's standard of living consequent to the SSP.¹⁴⁹ In order to preserve the quality of life for displaced persons, SSP authorities should direct their efforts at replacing the destroyed livelihoods, and not just the lost assets.¹⁵⁰ Additionally, in situations where authorities cannot provide land, the government of India should calculate compensation by assessing the land's replacement value rather than market value, a practice that safeguards the displaced's standard of living.¹⁵¹

147. See Hemadri et al., *supra* note 100, at xxxvi (suggesting that a “land-for-land” system must be the hallmark of an effective rehabilitation scheme).

148. See IBRAHIM F. I. SHIHATA, *THE WORLD BANK IN A CHANGING WORLD* 181, 189 (1991) (discussing the concept of eminent domain and the government's corresponding obligation to provide compensation for confiscated property).

149. See THEODORE E. DOWNING, *AVOIDING NEW POVERTY: MINING-INDUCED DISPLACEMENT AND RESETTLEMENT* 7 (2002) (commissioned by the Mining, Minerals and Sustainable Development Project of the International Institute for Environment and Development) (arguing that the lack of proper rehabilitation in development projects often leave victims of resettlement “trapped in perpetual poverty”), available at http://www.iied.org/mmsd/mmsd_pdfs/058_downing.pdf (last visited Feb. 19, 2005).

150. See Hemadri et al., *supra* note 100, at xxxvi (setting forth examples of important non-land based assistance such as exclusive fishing rights in the new reservoirs); see also Rangachari et al., *supra* note 6, at 150 (noting that large sums of cash may not be in the best interests of the affected persons because they are unfamiliar with handling large amounts of money).

151. See Rangachari et al., *supra* note 6, at 149-50 (discussing the unfortunate practice of determining the value of the land at the time of purchase). Prices for land often decrease after the project authorities designate an area as a submergence zone, and the government's purchase price may reflect this decrease. *Id.*

B. THE SSP SHOULD REVISE ITS DEFINITION OF PROJECT-AFFECTED PERSONS

Before rehabilitation measures can be effective, the Indian government should revise the criteria for determining eligibility under the NWDT Award.¹⁵² Currently, only people living in the SSP reservoir areas who hold legal title are eligible for compensation.¹⁵³ These eligibility criteria should allow people who are dependent on the land and have no legal title, or are located in areas beyond the SSP reservoir, to obtain rehabilitation.¹⁵⁴

A more appropriate definition of PAPs who are entitled to receive compensation should include all persons whose source of livelihood, place of residence, or other property is affected. This definition should not depend on an individual's legal status over the concerned location if the displaced person used the land to derive their livelihood or subsistence.¹⁵⁵ The landless and all persons negatively impacted by any of the works or activities related to the SSP should be treated as official PAPs.¹⁵⁶

152. See generally Narmada Tribunal Award, *supra* note 78 (outlining the policies and procedures for compensation to certain persons affected by the SSP reservoir).

153. See *id.* cl. XI(I) (limiting relief to those who live in areas submerged by the SSP reservoir and can provide legal proof of land ownership).

154. See TRAINING WORKSHOP, *supra* note 37, at 12 (recommending that India must also develop an India-specific definition for IDPs which distinguishes them from migrants).

155. See ENGENDERING RESETTLEMENT AND REHABILITATION POLICES AND PROGRAMMES IN INDIA 4 (2002) (discussing how the Draft National Policy, Packages and Guidelines for Resettlement and Rehabilitation 1998, provides a human rights focused approach to compulsory land acquisition and compensation) available at <http://www.ids.ac.uk/ids/env/PDFs/NarmadaWshop.pdf> (last visited Feb. 19, 2005). The Indian Parliament has yet to approve this Bill and other similar bills. *Id.*

156. See DAUD REPORT, *supra* note 104, at 21 (providing extensive recommendations based on materials furnished by the to-be-displaced tribes, villagers in resettlement colonies, and officers of the Maharashtra government); see also Rangachari et al., *supra* note 6, at 151 (proposing that development projects need to address the special needs of particularly vulnerable communities, like isolated tribal groups and other disenfranchised populations).

C. INDIA SHOULD DEVELOP A LEGAL FRAMEWORK TO DEAL WITH IDPS

The only way to establish and implement these broad reforms is to develop a legal framework that will ensure that IDPs are equitably treated.¹⁵⁷ India's existing legal infrastructure is inadequate for ensuring the protection of human rights in the implementation of the SSP.¹⁵⁸ Thus, India should develop and adopt a comprehensive legal and policy framework that avoids involuntary resettlement, minimizes displacement when it is unavoidable, and makes certain that displaced people receive adequate assistance to restore their living conditions to at least pre-project levels.¹⁵⁹

In addition, India must establish effective sanctions in order to ensure that development projects are partnered with rehabilitation policies and plans.¹⁶⁰ In fact, India has the greatest opportunity to prevent development-induced displacement at the outset given that as development projects progress, states often grow less open to advice from outside parties.¹⁶¹ This legal framework should include: (1) a statement of objectives; (2) mechanisms for resolution of

157. See Hemadri et al., *supra* note 100, at xxxviii (commenting on the inadequacy of a rehabilitation policy and process that is not based on legal authority).

158. See *id.* at xxv-xxvi (providing a survey of the opposition big dams in India have faced, and the policy lessons offered by such resistance); see also Baxi, *supra* note 7, at 1521 (proposing that justices may be able to create more human rights based protections for displaced people through an inventive use of human rights provisions in the constitutions and international bill of rights).

159. See e.g., ASIAN DEVELOPMENT BANK, HANDBOOK ON RESETTLEMENT: A GUIDE TO GOOD PRACTICE 93 (1998) (outlining a formalized policy on involuntary resettlement which avoids displacement where feasible, minimizes displacement by exploring all viable project options, and compensates and assists the people who are unavoidably displaced), available at <http://www.adb.org/Documents/Handbooks/Resettlement/default.asp> (last visited Feb. 19, 2005).

160. See Hemadri et al., *supra* note 100, at xxxiv (relaying the debate over whether states bear the ultimate responsibility for successfully rehabilitating the displaced).

161. See ROBINSON, *supra* note 25, at 27 (discussing development-induced displacement as a type of displacement where international assistance can prove most effective in the early stages of a project).

conflicts; (3) appeals procedures; (4) valuation and compensation for lost assets; and (5) shelter, infrastructure, and social services.¹⁶²

India should also legislate the right to rehabilitation as a legally enforceable right.¹⁶³ By creating legislation that specifically provides a justiciable right, PAPs will be ensured that they receive resettlement and rehabilitation in a systematic manner.¹⁶⁴ Such a framework should incorporate the Guiding Principles as a normative base and also build upon the rights recognized in the ICESCR and ILO Convention 107.¹⁶⁵ The legal obligations defined in the Indian Constitution and by the Supreme Court in *Olga Tellis* and *Ram Prasad* can also help structure a workable solution to the problems of internal displacement.¹⁶⁶

CONCLUSION

Since its inception, the SSP has run afoul of international human rights norms and violated the rights to livelihood and housing.¹⁶⁷ India should redress the deficiencies of its current policies that leave IDPs virtually unprotected¹⁶⁸ and work towards developing and

162. See *id.* at 33, 56 (suggesting that governments take steps to promote effective, comprehensive responses to development-induced displacement that incorporate a "recognition of rights" and an "assessment of risks").

163. See GLOBAL ECONOMY, *supra* note 93, at 25-26 (commenting on the need for a landscape in which there are tools for the legal and institutional enforcement of rehabilitation rights).

164. See *id.* (advocating that a provision on resettlement and rehabilitation in the law would help avoid litigation and consequent delays, prevent cost overruns of the projects, and also provide uniformity in dealing with the cases by the courts).

165. See WORLD COMM'N ON DAMS, DAMS AND DEVELOPMENT: A NEW FRAMEWORK FOR DECISION-MAKING 200 (2000) (noting that a rights-based approach provides a foundation for integrating the competing interests that emerge when choices must be made regarding development). See generally Spripati, *supra* note 21, at 468-69 (providing an overview of how Indian courts have recognized international human rights and reconciled them with the Indian Constitution).

166. See discussion *supra* notes 65-69 and accompanying text (discussing important Indian Supreme Court cases which interpret the right to life).

167. See discussion *supra* notes 91-105, 117-42 and accompanying text (suggesting that current policies and practices governing development projects such as the SSP violate human rights).

168. See Lama, *supra* note 17, at 26 (contemplating the bleak future scenario in India for IDPs and refugees).

implementing an enlightened rehabilitation and compensation policy to guarantee enforcement for affected citizens—one that has legal backing.¹⁶⁹ By doing so, India will be able to mitigate the social harms that accompany the SSP and ensure that its vulnerable citizens are not further marginalized.¹⁷⁰

169. *See id.* (discussing measures India must take to assume responsibility).

170. *See* Dana L. Clark, *Boundaries in the Field of Human Rights: The World Bank and Human Rights: The Need for Greater Accountability*, 15 HARV. HUM. RTS. J. 205, 223-26 (2002) (discussing the vital role a strong legal and policy framework can play in bringing about effective remedies).