

# Do People's Voices Matter?

## The Human Right to Participation in Post-tsunami Housing Reconstruction

Fact-  
finding  
Mission  
Report

10



South Asia Regional Programme  
Housing and Land Rights' Network  
HABITAT INTERNATIONAL COALITION





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**Report of a Fact-finding Mission to  
Tsunami-affected Areas of  
Tamil Nadu and Pondicherry**

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## Executive Summary

It is hard to believe that almost two years have elapsed since the December 2004 tsunami. Visiting the affected areas across the state of Tamil Nadu further heightens one's disbelief. While in a few places, minimal progress in rehabilitation has been made, most areas still wear a ravaged look with rubble and debris lying uncleared. More shockingly, tsunami survivors continue to face a steady onslaught of suffering, resulting from a persistent denial of their human rights, including their rights to livelihood, work, adequate housing, health, water, food, sanitation, security, education, and most of all, the human right to live with dignity.

This report presents the findings of a fact-finding mission conducted by Shivani Chaudhry and Malavika Vartak on behalf of the *Housing and Land Rights Network – South Asia Regional Programme* (HLRN - SARP) to the tsunami-affected areas of Tamil Nadu and Pondicherry from 13 — 20 October 2006. The aim of the mission was to undertake a human rights assessment of permanent housing with a special focus on the element of people's participation in rehabilitation processes. Some of the information presented in this report, was gathered during visits to resettlement sites in Nagapattinam, Chennai and Kancheepuram districts in January and July 2006.

Some of the key findings of the fact-finding mission include<sup>1</sup>:

- The most glaring lapse on the part of most involved actors has been the failure to consult with and involve tsunami survivors in developing rehabilitation plans;
- Close to two years after the disaster, almost 60% of the affected people in Tamil Nadu and Pondicherry are still living in uninhabitable and insecure temporary shelters made of tar sheeting or tin;
- The majority of people living in the inadequate temporary shelters had little or no information regarding when or where they would be allotted permanent housing;

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<sup>1</sup> For more details, see the following section on *Main Findings*.

- The government policy of providing one house for every one house lost, irrespective of the size of the original house or the number of families that it accommodated, has been highly inappropriate, as it leaves out members of joint families and multiple family units;
- The absence of a comprehensive needs assessment is evident in all rehabilitation processes, including the construction of permanent housing;
- The lack of a proper policy on land acquisition for rehabilitation of tsunami survivors has resulted in excessive delays in housing reconstruction;
- Although many families have rebuilt their houses along the coast, in some areas contention regarding the Coastal Regulation Zone (CRZ) Notification and its implementation still prevails;
- Where permanent housing has been provided, despite an investment of considerable resources and energy, most of it does not meet international human rights standards of adequacy. Instead, it has largely compromised space, cultural requirements, special needs of women, children, persons with disabilities and older persons, privacy and security, location, as well as access to livelihoods and essential services such as water, sanitation, food, and healthcare;
- The lapses in reconstruction are a direct result of the failure to provide people with adequate and timely information, and to include them in planning and decision-making processes regarding rehabilitation, including housing reconstruction.
- While a few NGOs involved in housing reconstruction have adopted participatory practices, there is still much that needs to be done with regard to improving people's participation and adhering to human rights standards vis-à-vis permanent housing.

Recommendations in this report made to government and non-government agencies as well as to other involved actors such as funders and multilateral development banks, include:

- the need for participatory and in-depth consultations with affected people, including women, children, and other marginalised and vulnerable communities;
- the urgent redressal of persistent housing problems;
- the incorporation of human rights standards of “adequacy” in all permanent housing plans;
- the immediate provision of adequate permanent housing for all those still living in temporary shelters;
- the development of enforceable timelines for completion of reconstruction;
- the creation of effective monitoring and grievance redressal mechanisms;
- the development of a comprehensive post-disaster rehabilitation policy; and,

- the need for incorporation of special needs of women, children, persons with disabilities, older persons, and other vulnerable and marginalised groups, in all rehabilitation plans and processes.

It is the responsibility of all agencies to adhere to international human rights standards and develop a strong human rights-based approach to rehabilitation.<sup>2</sup> The right to humanitarian relief and rehabilitation has to be recognised and upheld as a basic human right. It is absolutely imperative that existing lapses are recognized, acknowledged, and urgently rectified to ensure that people are able to realise their human right to an adequate standard of living, including the human right to adequate housing, and are able to resume living a life with security and dignity.

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<sup>2</sup> See: *International Human Rights Standards on Post-disaster Resettlement and Rehabilitation*, Housing and Land Rights Network and PDHRE – People’s Movement for Human Rights Learning. Available online at: <http://www.hic-sarp.org/Post-Disaster%20Compilation.pdf>



# Introduction

The Indian Ocean tsunami of 26 December 2004 was one of the world's worst natural disasters in terms of the number of people it affected, the number of countries it hit, and the extent of damage it inflicted. The event, apart from leaving an indelible mark in our collective memory, has irreversibly altered the lives of millions, who till today, continue to reel from the effects and continue to suffer from the aftermath. Their suffering, almost two years later, however, cannot just be blamed on the natural disaster but rather on the insensitive, inefficient and uncoordinated nature of rehabilitation processes underway in the affected areas. The most glaring lapse has been the failure to include tsunami survivors in developing rehabilitation plans, and the continued imposition of external programmes on them without their prior informed consent, often in direct opposition to their interests, culture, and specific needs.

While acknowledging the existence of certain positive initiatives and understanding the complexity of post-disaster reconstruction and rehabilitation, we cannot but be alarmed by the prevalent insensitivity to the human rights of the survivors, the lack of consultation with and involvement of the affected in rehabilitation processes, and a certain indifference that seems to permeate many of the current rehabilitation programmes.

## **Fact-Finding Mission to Tamil Nadu and Pondicherry, India**

This fact-finding mission carried out by the *Housing and Land Rights Network – South Asia Regional Programme* was a follow-up to our initial mission to the tsunami-affected areas of Tamil Nadu and Sri Lanka in June-July 2005.<sup>1</sup> While our first mission focused on assessing living conditions in temporary shelters for tsunami survivors with a human rights lens, the current visit aimed to undertake a human rights assessment of permanent housing with a special focus on the element of people's participation in rehabilitation processes. We also assessed whether human rights standards had been incorporated into permanent housing provided to tsunami-affected communities across the state.

The nature of temporary housing and processes related to it in the post-tsunami rehabilitation programme were severely criticised, not just by us in our earlier report, but by numerous civil society organizations. Among the many faults was the failure of government and non-government agencies to effectively involve people, especially women and those from marginalised communities, in decision-making processes. The result was that temporary housing fell far short of the most basic human rights and housing rights standards. In some cases, the situation of marginalised groups, including women and dalits, was made worse by insensitive policies and flawed and discriminatory approaches

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<sup>1</sup> *Post-Tsunami Relief and Rehabilitation: A Violation of Human Rights*, Housing and Land Rights Network, New Delhi, September 2005. Available online at: [http://www.hic-sarp.org/news\\_show\\_user.php?id=42](http://www.hic-sarp.org/news_show_user.php?id=42)

to relief and rehabilitation. Against this background, one of the objectives of the present fact-finding mission was to examine the permanent housing phase of post-tsunami response. The mission also aimed to document participatory mechanisms where they were used and to cull some of the lessons learnt with a view to inform and influence other ongoing reconstruction projects, especially with the intention of preventing past errors and upholding human rights of all survivors.

In our last report we raised serious concerns regarding the violation of human rights of tsunami survivors, including their rights to adequate housing and land, food, health, participation and information, relief, security, equality, and most of all their right to live with dignity. Despite strong and detailed recommendations to all involved actors, including government agencies, international humanitarian organizations, donors, multilateral development banks and non-government organizations, on incorporating a human rights approach in all relief and rehabilitation programmes, our recent visit revealed much to be ameliorated. The situation with regard to housing in particular, while better in some areas, continues to be egregious in others.

Given our time constraint, it was not possible to visit all tsunami-affected areas in Tamil Nadu; hence we selected a few sites across the worst hit districts of the state, which we believe are representative of the conditions prevalent around the state. We also tried to revisit sites that we had covered on our first fact-finding mission in order to assess the progress made in the last year with regard to housing and livelihood restoration.

This report is based on visits to Tamil Nadu and Pondicherry by Shivani Chaudhry and Malavika Vartak from *Housing and Land Rights Network* in January 2006 (Chennai and Nagapattinam), in July 2006 (Chennai and Kancheepuram) and in October 2006 (Tazhanguda, Pillumedu, Kalaignarnagar in Chidambaram, Cuddalore District; Karaikal in Pondicherry District; Akkaraipettai, Keechamkuppam, and Seruthur in Nagapattinam District; and Nagercoil, Melamanakudy, Keezhamanakudy, Kovalam, Veerabagupathy, Kottilpadu and Rajakamangalam Thurai in Kanyakumari District).

The report presents our main findings and uses the criteria of participation to analyse the various components of adequate housing. As explained later in the report, the benchmark used is that of “adequate housing,” which goes well beyond the perception of housing as a mere roof and four walls. The right to adequate housing has been developed using the indivisibility of human rights approach. It incorporates multiple related elements and is integrally linked to the human rights to life, livelihood, food, water, health, sanitation, participation, information, security, land and other natural resources.

This report uses international human rights law and guidelines as the basis for the promotion of a human rights approach. It includes recommendations to all involved actors, in particular for the need to adopt strong participatory mechanisms for the development and implementation of permanent housing projects for all tsunami survivors. The need to focus on the special concerns of women, children, and other marginalised groups such as fishworkers, dalits, persons with disabilities and older persons, is critical. It cannot be reiterated enough that it is only through the adoption of the principles of indivisibility of human rights, non-discrimination, gender equality, and meaningful participation, that rehabilitation can be adequate and will enable the affected communities to continue to live with dignity.

# **Main Findings**

## **1. Persistent violation of human rights of survivors**

Despite two years of post-tsunami relief and rehabilitation efforts, the human rights of the majority of survivors continue to be violated across the affected areas of Tamil Nadu and Pondicherry. This includes their human rights to adequate housing, livelihood and work, health, food, water, security, equality, information and participation.

According to non-government organization (NGO) estimates, around 60% of the affected people are still living in temporary shelters. Given the magnitude of human and financial resources available, this slow pace of rehabilitation cannot be condoned. It is unacceptable that people have been forced to continue to live in temporary shelters made of tar sheeting for two long years. All over the state of Tamil Nadu, including in Srinivasapuram in Chennai; Kottilpadu and Rajakamangalam Thurai in Kanyakumari; Akkaraipettai and Seruthur in Nagapattinam; and Karaikal in Pondicherry, people are living in highly inadequate housing with little or no information regarding when or where they will be allotted permanent housing. In Rajakamanglam Thurai, residents have been living without electricity for over five months.

Compared to the frustration and despair that was evident among those living in temporary shelters, most people in the permanent housing resettlement sites seemed relatively satisfied. Further discussions, however, revealed that their satisfaction was largely due to the fact that living conditions in the temporary shelters were so dismal that the allotment of permanent houses came as a relief. As discussions proceeded, people's disappointment and frustration with the reconstruction process as well as the inadequacies of the allotted houses and the resulting human rights violations became obvious.

## **2. Absence of people's participation resulting in inadequate permanent housing**

In most cases, participation of survivors in rehabilitation plans and associated decision-making processes has been absent, and at best, minimal. The lack of involvement of the affected in most permanent housing projects has resulted in gender-insensitive housing designs as well as a failure to meet the special needs of persons with disabilities and older persons. The exclusion of vulnerable and marginalised communities in planning and decision-making is glaring and results in their concerns being entirely overlooked.

Where people were still living in temporary shelters, the majority of them had no information as to when permanent housing would be completed. In some cases they had not even seen the resettlement site or the design of the houses.

Where people have moved into permanent houses, in many sites, the toilets had yet to be made functional. The failure to provide bathing spaces severely violates women's human rights to privacy and personal security. Facilities for solid waste management were universally absent across housing sites. With the lack of proper solid waste management, especially drainage facilities, it is hardly surprising that many in the resettlement sites across Tamil Nadu had been or were suffering from *chikungunya*.<sup>2</sup> The impacts of inadequate housing and living conditions on the health of survivors are apparent, and need to be urgently addressed as is the violation of affected people's human right to participate in planning and decision-making processes.

### **3. Abdication of state responsibility**

The Government of Tamil Nadu seems to have entirely relinquished its responsibility of ensuring that all tsunami-affected persons are adequately rehabilitated. Permanent housing is almost entirely being funded and coordinated by NGOs. In many sites, even two years after the disaster, rubble and debris from destroyed structures have yet to be cleared and infrastructure has still to be rebuilt. Another serious concern in many areas is that money allocated for post-tsunami reconstruction is being used for other infrastructure development in the state, not just in tsunami-affected districts.

### **4. Flawed government policy**

The problem of the lack of a comprehensive post-disaster rehabilitation policy is compounded by the non-implementation of the Disaster Management Act of 2005,<sup>3</sup> which though extremely restrictive in its scope is still the only available legal framework for dealing with post-disaster situations. Consequently, all that is available as guidelines on rehabilitation, particularly housing construction, for the numerous NGOs and voluntary agencies at work, are a handful of Government Orders (G.O.) found to be inadequate at best and highly restrictive at worst. Absolutely no human rights standards have been mentioned in any of the government issued guidelines and orders.<sup>4</sup> The government needs to develop strong timelines for completion of permanent housing and the maximum permissible duration of stay in emergency shelters and temporary shelters.

The state policy of providing one house for every one house that has been destroyed or damaged is extremely inappropriate. It does not take into account the family size or the size of the original house, which in many cases housed 2-3 family units. The government specification of 350 square feet as the standard size for all post-tsunami permanent houses has made it impossible for large joint families to live in those houses. As a result, many people, either members of a larger joint family or tenants, are forced to live in temporary shelters since there is no space for them in the new houses. This

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<sup>2</sup> Chikungunya is a relatively rare form of viral fever spread by the Aedes mosquito. Characterized by high fever, severe joint pain, and skin rashes, it is extremely debilitating.

<sup>3</sup> National Disaster Management Act 2005, [http://www.nidm.net/DM\\_act2005.pdf](http://www.nidm.net/DM_act2005.pdf)

<sup>4</sup> The only guidelines provided are the technical *Guidelines for Reconstruction of Housing affected by Tsunami in Tamil Nadu*, Revenue Administration, Disaster Management and Mitigation Department, Government of Tamil Nadu. [http://www.archidev.org/IMG/pdf/General\\_Technical\\_Guidelines\\_-\\_Part\\_1.pdf](http://www.archidev.org/IMG/pdf/General_Technical_Guidelines_-_Part_1.pdf)

makes evident the absence of a comprehensive needs assessment, which should have taken place before the policy was formulated. Additionally, since there is no proper policy on acquisition of land for rehabilitation of tsunami survivors, land prices have escalated making it almost impossible for NGOs to provide housing to those who have been left out due to the ‘one house for one house policy.’

All NGOs interested in building houses have to sign a Memorandum of Understanding (MoU)<sup>5</sup> with the Tamil Nadu government to establish the terms of operation, including financial contribution in the project. In most cases, MoUs are signed when the government allots land for housing construction to the interested NGO. The MoU, however, does not contain clear timelines for project completion; neither does it include provisions for quality control, monitoring and accountability to the affected people. When NGOs build houses on non-government land, the state government has limited involvement and interest in the project, including in providing the requisite infrastructure to support the settlement. In such instances, NGOs have to engage in concerted lobbying to ensure that the housing site has the necessary facilities of roads, sanitation, water and electricity.

#### **5. Coastal Regulation Zone Notification and *in situ* construction**

With regard to the Coastal Regulation Zone (CRZ) Notification, in part due to lobbying by fishing communities and their movements, the state seems to have relaxed its stance by not actively opposing *in situ* (on site) housing reconstruction. Some fishing communities have rebuilt on their original housing sites, as their location along the coast is critical to sustaining their livelihoods. The state government however, has refused to legally recognise the customary rights of fishing communities to the coast, or to provide financial assistance to housing constructed within the CRZ (500 metres from the high tide line). The state government is also trying to evict certain fishing communities from within the CRZ as in Marina Beach, Chennai, under the guise of safety, in order to acquire coastal land for tourism and commercial development.

#### **6. Absence of monitoring and grievance redressal mechanisms**

A persistent deficiency in post-tsunami relief, resettlement, reconstruction and rehabilitation processes has been the glaring lack of accountability, the absence of monitoring mechanisms and the failure of the state and other implementing agencies to provide grievance redressal options to the affected. These standards of operation are critical to protecting the human rights of survivors and have also been recognised in international human rights law, including in conference declarations and outcome documents.<sup>6</sup>

The lack of proper monitoring of rehabilitation by the government has meant that with regard to the processes followed and standards adopted, NGOs have been given a free

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<sup>5</sup> See Appendix IV for a copy of the standard Memorandum of Understanding.

<sup>6</sup> For more information on the relevant provisions in international law, see: *International Human Rights Standards on Post-disaster Resettlement and Rehabilitation*, Housing and Land Rights Network and PDHRE – People’s Movement for Human Rights Learning, January 2006. Available online at: [www.hic-sarp.org](http://www.hic-sarp.org)



reign. In the absence of effective government monitoring of technology and quality of material used, many houses have begun to show signs of wear and tear within a few months of construction.

In most sites that we visited, communities complained about the lack of mechanisms for housing maintenance and grievance redressal. These include the Discipleship Centre site in Kovalam, Tata Relief Committee site in Keezhamanakudy, Caritas/KSSS Nagar in Kottilpadu, Veerabagupathy, and Akkaraipettai.

Although we have highlighted some of the participatory practices adopted by some NGOs in the report, there is much that needs to be done to improve people's participation and to comply with human rights standards vis-à-vis permanent housing. It is absolutely imperative that the significant lapses that have occurred, as described in this report, are recognized, acknowledged, and urgently rectified to ensure that people are able to realise their human right to an adequate standard of living, including the right to adequate housing.

## Sites Visited on the Fact-Finding Mission

Since this was a follow-up mission to our first fact-finding mission, we attempted to visit most of the sites assessed by us in June 2005. We were also able to cover some new sites on this mission. As mentioned earlier, about 60% of those affected by the tsunami had still not received permanent houses. In many ways, therefore, it seemed that little had been achieved over the past year in terms of progress in rehabilitation. The situation of temporary shelters had, in fact, worsened as many had succumbed to wear and tear and harsh weather conditions.

Given government restrictions on space and financial constraints, the permanent houses that we saw across both Tamil Nadu and Pondicherry were almost similar. Most of the houses were single storied independent structures with a staircase leading up to a terrace from outside the house. The standard design of newly constructed houses comprised of a living room, a bedroom and a small kitchen. While there were toilets, in some houses there was no bathing area. In many sites, the toilets had an external entrance, though they were attached to the houses. Some of the houses had a little space around them in which people had grown plants. In spite of the structural similarities, each site was unique in its own way and had variations depending on the NGO responsible for construction. Below is a brief introduction to the sites visited on this fact-finding mission.

### **Keezhamanakudy, Kanyakumari District**

Keezhamanakudy in Kanyakumari district is 100% Catholic and almost 90% of the community consists of fisherfolk; those who fish and those involved in fish cleaning and fish vending. Tata Relief Committee (TRC) had built the majority of permanent houses in this area while another local non-government organization – Rural Uplift Centre (RUC), was constructing homes for those from



*Tata Relief Committee permanent housing site*

joint families who could not afford separate accommodation on their own. Both TRC and RUC had modified the government stipulated 350 square feet house size to 420 and 440 square feet respectively. TRC had taken on the responsibility of reconstructing 195 houses, of which seven needed to be repaired and 188 had to be completely reconstructed. Twenty-five of these were built on the original house sites while the rest were built on newly purchased land. The size of each house plot was around five cents while the built up area was three cents.<sup>7</sup>



*Permanent house being constructed by RUC*

### **Melamanakudy, Kanyakumari District**

Like Keezhamanakudy, the community here is also entirely Catholic and engaged in fishing and related activities. Melamanakudy is connected to Keezhamanakudy by a bridge, which was destroyed by the tsunami. While a new bridge reconnecting the two settlements had been built, remains of the broken bridge, however, continued to lie there,



*Melamanakudy permanent housing site*

like most of the rubble and bricks from destroyed houses. Uncleared and untouched, there is no escaping this harsh reminder of the great disaster.

A consortium of international and local NGOs including Swiss Solidarity, Caritas, and Kottar Social Service Society (KSSS) has built permanent houses in Melamanakudy in two blocks, with 205 houses in one section and 95 in another. All affected people moved into the permanent houses in March 2006 with nobody living in temporary shelters any more.

### **Kovalam, Kanyakumari District**

Permanent housing in Kovalam was being constructed at two different sites by two groups – Discipleship Centre (DC), Delhi (with support from Tear Fund), and Praxis, an NGO based in Nagercoil. The DC site was complete and people had moved into their houses

<sup>7</sup> 1 cent approximates 1200 square feet of land.

in February 2006. A total of 88 houses had been built for the community on land allotted by the government. While their original village was close to the seashore, the new site was at a distance of 1.25 kilometres from the coast. This was also an all-Catholic settlement comprising of both boat owners and coolies or workers.

Praxis (with support from Action Aid) was only constructing houses for those who had been excluded by the government policy of one house for one house. The local parish council was responsible for preparing the list of those who would be allotted permanent houses. 50 houses were being built on land that people had occupied themselves. These would be completed by December 2006. The government had earlier stalled construction on the grounds that it was on “occupied land.”



*Discipleship Centre resettlement site, Kovalam*

### **Kottilpadu, Kanyakumari District**

Kottilpadu was one of the worst hit areas in the district; 198 lives were lost here in the tsunami. Living conditions in the temporary shelters when we visited the area in June 2005 were extremely inadequate. In October 2006, most of the temporary structures lay empty, as people had shifted to their permanent houses. Around 26 families, however, were still living in the dilapidated tar sheet shelters as they awaited allotment of permanent houses. We were told that 246 permanent houses had been built by KSSS and Caritas, and around 220 by Catholic Relief Service (CRS).



*Poorly maintained temporary shelter along the coast in Kottilpadu*



*Caritas/KSSS Nagar permanent housing site in Kottilpadu*



### **Rajakamangalam Thurai, Kanyakumari District**

All residents of Rajakamangalam Thurai belong to the fishing community and are Catholic. At the time of our visit, 46 families were still living in temporary tin shelters provided by the government.

Praxis had also taken on the task of building houses for some of the most vulnerable families in this area. They had selected 70 affected families who had been neglected by the authorities. Praxis was in the process of constructing 56 houses in collaboration with Architecture and Development and with funding from the French Red Cross. Of these, 14 houses were being built *in situ*. The houses are estimated to be ready by March 2007.



*Inadequate temporary shelters at Rajakamangalam Thurai*



*Construction underway at Rajakamangalam Thurai by Praxis*

### **Veerabagupathy, Kanyakumari District**

Veerabagupathy is one of the rare settlements on the Kanyakumari coast, which comprises not of fisherfolk but of agricultural labourers and coir and *beedi* workers. It is also one of the few non-Catholic settlements. Habitat Technology

Group with funding from Foundation de France had built permanent houses in two blocks – 58 at one site and 18 at another. People, however, had bought the land on their own; each family had paid approximately Rs. 25,000 for 3 cents of land. They had moved to the site in September 2006.



*Veerabagupathy permanent housing site*

### **Akkaraipettai, Nagapattinam District**

The temporary shelter in Akkaraipettai is one of the largest in Tamil Nadu. Built of tar sheeting and divided into three different clusters in close proximity to one another along Salt Road in



Nagapattinam, the shelter is also one of the most densely populated, congested, decrepit and poorly maintained.

Originally the tar sheet temporary shelters housed 1200 families, of which 400 families still live there. The remaining families have either moved back to their original sites or are currently living with relatives. It is only those with no other available options who are forced to remain there in



*Decrepit tar sheet shelters in Akkaraipettai*

worsening living conditions. While one shelter cluster near the Seva Bharati permanent housing site was dismantled at the end of January 2006 to make space for permanent housing, the other two areas continue to house families who are waiting

to move into permanent housing that is still being constructed. For those who were forced to vacate the shelters in January, no alternate housing or land was provided for them to live in the interim, until the permanent houses were ready. Most of them had made arrangements to live with relatives while a few had opted to rent rooms, as they had no other feasible alternative.

### **Keechamkuppam, Nagapattinam District**

Located on the coast, the hamlet of Keechamkuppam consists of fisherfolk. With the help of an NGO called Social Needs Education and Human Awareness (SNEHA), these families have rebuilt their houses in their original locations and resumed their fishing livelihoods. While the government has not played any role in the rehabilitation of families in



*Keechamkuppam hamlet*

the rehabilitation of families in Keechamkuppam, it has not even fulfilled its basic responsibility of providing sanitation services. As a result, garbage mounds and pools of stagnant water are a common site, and provide ideal breeding grounds for the spread of chikungunya and dengue.

### **Seruthur, Nagapattinam District**

Situated close to Velankanni, the Seruthur tar sheet temporary shelter constructed by Swami Dayanand Saraswati continues to house over 625 families. Of these, apparently only 200 families will be allotted permanent houses currently being built by People's Development Association. The process of selecting the beneficiary families was not known. At the time of our visit, people were still uncertain as to where they would live, which 200 families would be given the permanent houses, and when they would all be able to move into permanent housing.



*Seruthur temporary shelter*



*Temporary shelter in Karaikal*

families continue to live in temporary shelters while others have moved in with relatives.

### **Chidambaram, Cuddalore District**

CREED with funding from CARE India has built 165 permanent houses in Kalaighnagar, 82 in Pillumedu, and 324 in Pallayar – all in the district of Cuddalore – at a cost of Rs. 1,57,000 per house. The Tamil Nadu government provided the land for housing construction. Each house plot

### **Karaikal, Pondicherry District**

Development Alternatives (DA) – a Delhi-based NGO – with support from Swiss Red Cross is building 750 houses for families in Karaikal Medu, Kilinjal Medu and Kottucherry Medu in Karaikal, on land provided by the government. Six contractors are constructing the houses with supervision by DA. While awaiting completion of permanent housing some



*Kalaighnagar permanent housing site*

covers an area of three cents. CREED has ensured that all *pattas* (titles) to houses were given in the names of women only.

### **Ernavoor, Chennai**

Over 1000 families from the Kargil Nagar temporary shelter outside Chennai were moved to Ernavoor to “intermediate shelters” in early January 2006 where they are expected to live for three years until permanent housing is built for them in Thoraipakkam. These are people whose temporary shelters were first gutted by a large fire in May 2005 and then completely flooded in December 2005. Since Kargil Nagar was situated in a low-lying marshy area, the government finally decided to relocate the settlement in January 2006. The 1785 “semi-permanent” shelters currently enjoy 70% occupancy and have been built by People’s Action Movement, ActionAid and Karunalaya.



*Semi-permanent shelters at Ernavoor*



*Srinivasapuram*

### **Srinivasapuram, Chennai**

Srinivasapuram in Pattinapakkam near Marina Beach in Chennai is predominantly a colony of fisher people. Most of the non-fisher people were dalits and tenants of the fisher people. Srinivasapuram did not appear to have changed much since our last visit in June 2005.

The rows of houses closest to the sea were the worst affected by the tsunami and continued to exist in the most deplorable of conditions. Debris from broken houses was still lying

around. People had tried to rebuild their homes from thatch, tarpaulin and material rescued from their old homes such as doors, windows and wood planks. Others were living in tents made out of old bed-sheets, saris and tarpaulin. Access to basic facilities was severely hampered. One NGO had constructed ten homes but these too were temporary in nature. Alternative housing had been provided at Semmancherry, which was around 20 kilometres from the sea. Reportedly, most of the people who had moved there belonged to the non-fishing castes and were mainly dalits.



### **Periya Nemelli Kuppam, Kancheepuram District**

Periya Nemelli Kuppam is a fishing village in Kancheepuram district. World Vision was providing permanent housing, which was under construction at the time of our visit in July 2006. The reported cost per house was Rs. 2.8 lakhs. The new permanent houses were being constructed on the original sites to which all 131 families in the village had legal title. World Vision was rebuilding houses for everyone in the

village, even those whose homes were standing but had been severely damaged. In cases where two families shared a *patta* (for example if two brothers had a joint title), World Vision was constructing double storied houses.



*Permanent housing site, Periya Nemelli Kuppam*



*Permanent housing site, Pudu Kalpakkam*

### **Pudu Kalpakkam, Kancheepuram District**

Pudu Kalpakkam is situated just a few kilometres away from Periya Nemelli Kuppam. Like in the case of Periya Nemelli Kuppam, residents of Pudu Kalpakkam were living around 75 – 100 metres inland from their original village. Of the 168 families living in this village, around 112 families lost their homes to the tsunami while the rest of the houses suffered severe damage.

Residents of Pudu Kalpakkam were living in temporary shelters constructed by Women's Collective. Unlike most other temporary shelters, these had been built of thatch. Women's Collective was constructing the permanent houses *in situ* at a cost of Rs. 2 lakhs per house.

## Human Rights and Natural Disasters

The long-term impacts of any disaster – natural or otherwise – are felt in every aspect of human life and activity. Apart from the trauma resulting from loss of life and destruction of home and environment, most disaster victims are left to cope with the steady erosion, and often complete disregard, of their basic human rights. Among the most fundamental human rights that are violated in post-disaster situations are the human rights to livelihood, food, health, security, and adequate housing. Violations of these rights are often exacerbated when relief and rehabilitation measures are not planned and executed from a human rights perspective, are not timely and adequate and do not take into account the specific needs and concerns of women, children, and other vulnerable groups within affected communities.<sup>8</sup>

The Inter-Agency Standing Committee (IASC) *Operational Guidelines on Human Rights and Natural Disasters*<sup>9</sup> developed in June 2006 lay down clear and detailed rights of survivors of natural disasters as well as duties of responsible agencies. The General Principles clearly mention that:

- II. States have the primary duty and responsibility to provide assistance to persons affected by natural disasters and to protect their human rights.
- III. Organizations providing protection and assistance to persons affected by natural disasters accept that human rights underpin all humanitarian action. In situations of natural disaster they should therefore respect the human rights of persons affected by disasters at all times and advocate for their promotion and protection to the fullest extent.

The tsunami, like other natural disasters of this magnitude, has created a large number of internally displaced persons (IDPs) who have been either forced to relocate due to government regulations regarding coastal areas, for personal safety reasons, or because of the new location of permanent housing sites over which they had no choice. For whatever reason, as long as the survivors of the disaster remain displaced, they must be treated as IDPs and guaranteed their rights as per the requirements of

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<sup>8</sup> For a comprehensive listing of applicable human rights standards, see: *International Human Rights Standards on Post-disaster Resettlement and Rehabilitation*, Housing and Land Rights Network and PDHRE – People's Movement for Human Rights Learning, January 2006. Available online at: <http://www.hic-sarp.org/Post-Disaster%20Compilation.pdf>.

<sup>9</sup> Henceforth for the purpose of this paper, *Operational Guidelines*. Available online at: <http://www.humanitarianinfo.org/iasc/content/documents/default.asp?docID=1707&publish=0>



international law. The UN *Guiding Principles on Internal Displacement*<sup>10</sup> should be adhered to and incorporated into relief and rehabilitation plans. In particular, Principle 18 states that:

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
  - (a) Essential food and potable water;
  - (b) Basic shelter and housing;
  - (c) Appropriate clothing; and
  - (d) Essential medical services and sanitation.

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<sup>10</sup> Available online at: <http://daccessdds.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement>

# The Human Right to Adequate Housing

In cases of both natural and non-natural disasters like situations of armed conflict and communal riots, housing is often one of the first human rights to be adversely affected. As a result, a major component of post-disaster response often includes housing reconstruction programmes. The human right to adequate housing therefore provides a useful standard for conducting a human rights assessment of post-disaster response, moreover since ‘adequate housing’ is understood not merely as four walls and a roof but includes a variety of essential facilities and services as well as a number of factors that facilitate access to other human rights. The human right to adequate housing is therefore inextricably linked to several other human rights, including the right to life, right to health, right to food, right to water, right to work and livelihood, right to information and participation, right to gender equality, right to security of person and the home, and right to a safe and healthy environment.

## International Legal Provisions

### Human Right to Adequate Standard of Living, including the Human Right to Adequate Housing

Universal Declaration of Human Rights, Article 12, Article 25.1;  
International Covenant on Economic, Social and Cultural Rights, Article 11.1;  
Convention on the Elimination of All Forms of Discrimination against Women, Article 14.2 (h);  
Convention on the Rights of the Child, Article 27;  
International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (e) (iii);  
Committee on Economic, Social and Cultural Rights, General Comments 4 and 7.

The human right to adequate housing has been recognised as integral to the right to an adequate standard of living in Article 25.1 of the *Universal Declaration of Human Rights (UDHR)*, 1948. The human right to adequate housing and its corresponding state obligations are also recognised in several other internationally binding human rights treaties, including the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, *Convention on the Rights of the Child (CRC)*, and the *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*.<sup>11</sup> All these treaties have been ratified by India, which makes the guarantee of human rights enumerated in them, legally binding on the Government of India.

<sup>11</sup> See Appendix I for a list of international legal provisions that guarantee the human right to adequate housing.

The international instrument which contains the most comprehensive legal provision for the human right to adequate housing is the *International Covenant on Economic Social and Cultural Rights (ICESCR)*, of which Article 11.1 states that:

State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his<sup>12</sup> family, including adequate...housing and to the continuous improvement of living conditions.

The normative content of the human right to adequate housing, state obligations, and the nature of violations have been articulated in General Comment 4 on the 'The right to adequate housing,' of the UN Committee on Economic Social and Cultural Rights (CESCR). Some of the core components of the right as per General Comment 4 are as follows:

1. *Legal security of tenure* – protection against forced eviction and harassment.
2. *Availability of services, materials, facilities and infrastructure* – Facilities essential to health, security, comfort and nutrition must be made available. These facilities include but are not limited to, safe drinking water, sanitation and washing facilities, and energy for cooking, heating and lighting.
3. *Habitability* – There should be adequate space and protection from the elements. Conditions conducive to disease and structural hazards should be eliminated.
4. *Accessibility* – Every person must have access to adequate housing.
5. *Location* – Adequate housing must allow for access to employment options, healthcare, schools and other social services. There must not be excessive financial demands on the household with respect to transportation.
6. *Affordability* – Expenditures for housing should be commensurate with income levels as basic needs should not be compromised.
7. *Cultural Adequacy* – The housing configuration must not compromise cultural expression.

Based on the indivisibility of human rights and the experience of various people's movements defending the human right to adequate housing, some key components which further strengthen the human right to adequate housing in terms of making it more substantial and holistic have been added to the above seven components articulated in General Comment 4.<sup>13</sup> The additional key components are as follows:

1. Access to natural resources – land and water
2. Information, participation and capacity-building
3. Resettlement, restitution, compensation, non-refoulement and return
4. Freedom from dispossession, damage and destruction
5. Physical safety and security

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<sup>12</sup> The male specific language of international human rights treaties is understood to include women.

<sup>13</sup> The Housing and Land Rights Network ([www.hlrn.org](http://www.hlrn.org)) and the UN Special Rapporteur on adequate housing have also expanded the criteria of adequacy of housing. For example, see: <http://www.ohchr.org/english/issues/housing/docs/questionnaireEn.doc>

All twelve components have informed the current study which assesses the situation vis-à-vis the human right to adequate housing in post-tsunami rehabilitation in Tamil Nadu. These entitlements have been used as standards for assessing and monitoring the human right to adequate housing in several instances, while recognising that each component may not always emerge as a distinct category, but may overlap or be inextricably linked to another component.

**The human right to adequate housing**

"The right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity."  
*UN Special Rapporteur on adequate housing*<sup>14</sup>

The IASC *Operational Guidelines* also contain specific provisions related to the human right to adequate housing in the context of natural disasters.

B.2.4 The right to shelter should be understood as the right to live somewhere in security, peace and dignity. These criteria should be used as benchmarks in planning and implementing shelter programmes, taking into account the different circumstances during and after the emergency phase.

C.3.1 As soon as possible, appropriate measures should be taken, without discrimination of any kind, to allow for the speedy transition from temporary or intermediate shelter to temporary or permanent housing, fulfilling the requirements of adequacy in international human rights law.

C.3.2 The criteria for adequacy are: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education. Respect for safety standards aimed at reducing damage in cases of future disasters is also a criterion for adequacy.

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<sup>14</sup> Report of Miloon Kothari, UN Special Rapporteur on adequate housing, to the Commission on Human Rights, 25 January 2001, E/CN.4/2001/51.

# The Human Right to Participation

Meaningful participation in decisions that affect one's life is a human right as well as a means to ensure enjoyment of all human rights.

Effective participation in decision-making is essential to the fulfilment of all other rights, as well as the elements of the human right to adequate housing. At all levels of the decision-making process in respect of the provision of and right to adequate housing, individuals and communities must be able to express and share their views, they must be consulted and be able to contribute substantively to such processes that affect housing, including location, spatial dimensions, links to community, social capital and livelihood, housing configuration, and other practical features. The state must ensure that building and housing laws, policies and programmes do not preclude free expression, including cultural and religious diversity.

For participation to be meaningful it has to be initiated right in the beginning, i.e. in the first stages of project development. It is not a one-time effort but a planned process of ongoing inclusion. It involves listening to the voices of the concerned and then ensuring that those voices are given weight and consideration. Survivors must have a voice and a say in what occurs in their communities.

Participation must be:

- community-based;
- founded on equal partnership;
- non-discriminatory;
- informed through equal and effective access to information.

While assessing the level of participation, it is important to look at what policies and measures have been adopted to ensure people's participation in decision-making processes with regard to housing policies and planning. The failure to include women and other marginalised groups in all the different stages of planning and implementation in post-disaster rehabilitation results in a flagrant violation of their human rights. For example, the absence of women's participation results in gender-insensitive outcomes – whether it is the lack of adequate lighting or sufficient space for women to bathe or the inappropriate location of toilets, which violates their human right to privacy and security.

Housing laws and policies, and in this case, all resettlement and housing development plans must expressly respect, protect, and fulfil the human right to freedom of expression



to ensure harmonious and effective design, implementation and maintenance of the community.

### **The Right to Information and Transparency: A Corollary to the Right to Participation**

Participation is supposed to be guaranteed through access to information, through freedom of expression and association and through involvement in decision-making. These provide the means through which people can realise their right to participation.

The human right to information forms the crucial underpinning of participatory democracy; it is essential to ensure accountability and good governance. Without information, people cannot adequately exercise their human rights as citizens or make informed choices. There can be no democratic participation in decision-making without transparency and information sharing.

In its very first session in 1946, the UN General Assembly adopted Resolution 59(I), stating, “Freedom of information is a fundamental human right and ... the touch-stone of all the freedoms to which the United Nations is consecrated.”

In subsequent international human rights instruments, freedom of information was set out as inherent to the fundamental right of freedom of expression, which included the right to seek, receive and impart information. In 1948, the UN General Assembly adopted the *Universal Declaration of Human Rights*, which guarantees freedom of opinion and expression: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Article 19 of the *International Covenant on Civil and Political Rights (ICCPR)* of 1966, also guarantees that: a) Everyone shall have the right to freedom of opinion; b) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any media of his choice.

The UN Economic Commission for Europe (UNECE) *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)*<sup>15</sup> grants the public rights and imposes on Parties and public authorities obligations regarding access to information and public participation and access to justice. As affirmed by the Secretary-General of the United Nations, Kofi Annan, although regional in scope, the significance of the Aarhus Convention is global.

Article 3 of the Convention clearly establishes that:

1. Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access to justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.

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<sup>15</sup> Adopted on 25 June 1998 in the Danish city of Aarhus (hence known as the *Aarhus Convention*).

2. Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters.<sup>16</sup>

The *Aarhus Convention* further sets out five means for enhancing participation. First, it requires the parties to provide for “early public participation, when all options are open and effective public participation can take place.” Second, each party must inform the public concerned, by public notice or individually, about the proposed activity, the nature of possible decisions, the envisaged procedure and possibility of participating, the time-frames, and the place where information is being held. Third, the public can submit comments, either in writing or at hearings or inquiries. Fourth, due account has to be taken of the outcome of public participation. The decision-making authority cannot simply do away with people’s comments and opinions without considering them seriously. Finally, the reasons and considerations upon which the ultimate decision is taken, have to be explained.

In India, the right to information has been recognised by the Supreme Court as part of the right to freedom of speech and expression under Article 19 (1) (a) of the Indian Constitution. A result of concerted people’s advocacy and effort, The Right to Information Act 2005, contains strong provisions guaranteeing the right of all Indians to access government information and to demand accountability.

The right to participation essentially means that all responsible and involved actors function in a transparent manner and provide all relevant information at every state of post-disaster response to survivors so that they may make fully informed decisions about their futures.

Officials must provide timely and adequate information in the local language to survivors, which should include information on:

- Information on rights of survivors;
- Information relating to the safety and accessibility of survivors’ communities, including shelter and housing, schools, medical facilities, and essential services such as electricity, water, and sanitation, (this includes information about public health and environmental threats and necessary safety precautions);
- Information on the whereabouts of missing relatives;
- Information on steps taken by the government in the process of disaster response and in the allocation of public resources;
- Information on plans and options for survivors to return to their previous homes or resettle in different areas; and
- Information on ways in which survivors can have a say in their future, and specifically how they can participate in designing, implementing, and assessing rebuilding and resettlement efforts.<sup>17</sup>

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<sup>16</sup> <http://www.unece.org/env/pp/>

<sup>17</sup> Adopted from *Human Right to Participation of Hurricane Katrina Survivors*, National Economic and Social Rights Initiative (NESRI), New York.

The consultation and participation of affected populations and their institutions at different stages of relief and reconstruction is central, especially to issues of quality of response, ownership of the processes and multiple accountabilities between various actors.

### **The Right to Play a Role in Decision-Making**

Human rights standards require the government to ensure the meaningful participation of the affected in planning and decision-making regarding their futures and the futures of their communities. Specifically, affected people have the right to participate in decisions about and the design, implementation, and assessment of:

- Shelters, housing, public buildings (such as schools and hospitals), and infrastructure (including roads, public transportation, and sanitation, water, and electricity systems);
- Plans for returning to their communities or resettling in other areas;
- Plans for rebuilding neighbourhoods, demolition of homes, and compensation for damaged property;
- The future of public institutions, such as schools and hospitals; and
- Plans of the government to encourage economic rebuilding and job growth.<sup>18</sup>

Adequate consultation implies that individuals' and communities' prior informed consent must be sought before any decision is finalized. Furthermore, the consent has to be ensured at various stages of project planning and implementation, not merely at the end when most variables have already been fixed. Free, prior and informed consent must include the following principles: (i) information about and consultation on any proposed initiative and its likely impacts; (ii) meaningful participation of affected peoples; and, (iii) inclusion of representative institutions.

Official interpretations of several international instruments, including the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *International Covenant on Economic, Social, and Cultural Rights*, indicate that prior informed consent of indigenous peoples is central to effectuating rights within these conventions, including the right to non-discrimination and the right to property.<sup>19</sup>

The inclusion of and adequate consultation with marginalised groups is essential to reversing historic discrimination and to guarantee that exclusionary practices are not perpetuated in post-disaster response processes. This includes making special provisions and mandating the participation of dalits, adivasis, women, children, minorities, the elderly, persons with disabilities and those living with illness, including those with HIV/AIDS. Special measures should be taken to ensure their engaged involvement in policy consultations, programme planning, implementation, monitoring and evaluation processes. Unless these groups are represented adequately in decision-making processes,

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<sup>18</sup> Ibid.

<sup>19</sup> Anne Perrault and Maria Julia Oliva, ICTSD/CIEL/IDDRI/IUCN/QUNO Dialogue on *Disclosure Requirements: Incorporating the CBD Principles in the TRIPS Agreement: On the Road to Hong Kong*, WTO Public Symposium, Geneva, April 21, 2005.

it is unlikely that their concerns will be factored into projects, especially housing construction, as is evident in the post-tsunami context in Tamil Nadu. Adequate representative participation is an effective tool to promote the principle of non-discrimination and to dismantle prejudice and inequality. Consultation and consent of community leaders does not, in itself, amount to the consent of the entire community, especially where leaders are responsible for promoting an unequal power dynamic.

Meaningful participation also implies the right to demand accountability – an element that is largely missing in post-tsunami rehabilitation processes, be it from government or non-government agencies.

### **International Legal Provisions Guaranteeing the Human Right to Participation**

The human right to participation has been guaranteed and upheld in international law – both in legally binding instruments consisting of United Nations treaties, and in numerous convention documents, guidelines and general comments and recommendations of special committees.<sup>20</sup>

In particular, Article 21 of the *Universal Declaration of Human Rights*, 1948; Article 25 of the *International Covenant on Civil and Political Rights*, 1966; and Article 7 of the *Convention on the Elimination of All Forms of Discrimination against Women*, 1979, contain legally binding provisions for participation.

The IASC *Operational Guidelines* also reiterate, “the need to ensure non-discriminatory humanitarian assistance, as well as **the need to consult with the affected people**” (emphasis added). Principle 28 (2) of the *Guiding Principles on Internal Displacement* states that, “Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.”

General Comment 4 of the Committee on Economic, Social and Cultural Rights also mandates extensive consultation with and participation of people in housing laws and policies.

Women’s rights to participation and their involvement at all levels of decision-making finds special mention in Article 14 (2) of the *Convention on the Elimination of All Forms of Discrimination against Women* (1979), which affirms: “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (a) To participate in the elaboration and implementation of development planning at all levels; (b) To have access to adequate healthcare facilities, including information...” The Committee on Economic, Social and Cultural Rights in its General Comment No. 16 (2005), titled “The equal right of men and women to the enjoyment

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<sup>20</sup> See Appendix II for a complete list of international legal provisions which guarantee the human right to participation.



of all economic, social and cultural rights,” also stresses as a goal, in para. 21: “To promote equal participation of men and women in development planning, decision-making and in the benefits of development and all programmes related to the realization of economic, social and cultural rights.” This is further supported in Principle 18 (3) of the *Guiding Principles on Internal Displacement*, which states that: **Special efforts should be made to ensure the full participation of women** (emphasis added) in the planning and distribution of these basic supplies.

Children’s rights to information and participation are guaranteed in the *Convention on the Rights of the Child* (1989). Including children’s opinions and concerns in all matters affecting them such as the family, school, housing, and community is critical. Article 13 (1) establishes that: “The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.”

The *United Nations Principles for Older Persons* (1991) specify that: “Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.”

## The Human Right to Participation and the Human Right to Adequate Housing

As with all human rights, the right to adequate housing, too, must be understood in the context of indivisibility of rights. In other words, the human right to adequate housing is closely and intrinsically linked with other rights guaranteed by the body of human rights instruments, which are affected when the human right to housing is affected, positively or negatively. For instance, it has been recognised that conditions in the housing environment have direct consequences for enjoyment of the right to health.<sup>21</sup> Similarly denial of the human right to participation has adverse effects on the human right to adequate housing, as is evident in the nature of permanent housing that has been provided for tsunami survivors. A clear correlation can be established between the human right to participation and the human right to adequate housing. In the post-tsunami rehabilitation scenario too, where participation has been ensured, the housing provided is more likely to meet the criteria of adequacy described above. Where it hasn't, visible violations of the human right to adequate housing are manifest.

Of significant importance to participation in housing is Section II (13) of the *Vancouver Declaration on Human Settlements* which states: "All persons have the right and the duty to participate, individually and collectively in the elaboration and implementation of policies and programmes of their human settlements."<sup>22</sup> The UN Special Rapporteur on adequate housing has also stressed on the right to participation in his reports, in particular in his work on women and housing.<sup>23</sup>

The IASC *Operational Guidelines* also contain a strong provision for participation in housing:

C.3.3 To ensure sustainable long-term planning of resettlement and reconstruction in the aftermath of a natural disaster, **all affected groups and persons, including women, indigenous peoples and persons with disabilities, should be consulted and participate in the planning and implementation**

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<sup>21</sup> *Health Principles of Housing* (Geneva: World Health Organization, 1989); UNCHS, *Crowding and Health in Low-income Settlements*, Settlement Infrastructure and Environment Programme Series, No. 1 (Nairobi: UNCHS, 1998).

<sup>22</sup> Vancouver Declaration on Human Settlements, United Nations Conference on Human Settlements (Habitat I), 1976.

<sup>23</sup> For more information, including the reports of the Special Rapporteur on adequate housing, see: <http://www.ohchr.org/english/issues/housing/index.htm>

**of housing programmes** (emphasis added). To the maximum extent possible, and provided that necessary safety standards are met, owners of destroyed houses should be allowed to decide on their own how to rebuild them.

During the course of the present assessment of post-tsunami response, particularly in the case of permanent housing and adherence to human rights principles, it was once again clear that information and participation are instrumental in ensuring the protection, promotion and fulfilment of the human rights of those affected by disasters. The present study therefore uses availability of information and the facilitation of participation of all affected people as a lens through which the extent of the fulfilment of the human right to adequate housing may be ascertained. This study also brings out ways in which the absence of information and participation has resulted in housing rights violations. The aim of the present study is not merely to bring out the lacunae in the context of post-tsunami permanent housing but also to highlight and share positive practices and lessons learnt in housing reconstruction.

Close to two years after the tsunami struck the coast of Tamil Nadu among various other parts of South and South-east Asia, post-tsunami reconstruction work by government, non-government and inter-government agencies continues in full spate. While progress has been made in some areas, most of the affected are still waiting with diminishing hope to return to a life of normalcy.

It is necessary to mention at the outset that while permanent housing construction, although delayed, seems to be going ahead full steam in most areas, there remain places that seem to be untouched by these developments. In Srinivasapuram in Chennai, fishing communities close to the coast continue to live in self-constructed shacks with a constant threat of eviction, while in large tracts of the Akkaraipettai temporary housing site and in Seruthur in Nagapattinam, people were still residing in highly uninhabitable temporary structures made of tar sheeting. Their trials with regard to housing are endless, with few solutions in sight. It is inexplicable why residents in the above mentioned places have no idea when or where they will get their permanent homes despite the fact that numerous international and local NGOs, the Tamil Nadu government as well as various international bilateral and multilateral agencies are involved in post-tsunami reconstruction.

The next section of the report endeavours to analyse the effects that participation or the absence of it has had on the various components that constitute adequacy of housing.

## **1. Security of Tenure**

### **International Legal Basis**

Universal Declaration of Human Rights, Articles 12, 17;  
International Covenant on Economic, Social and Cultural Rights, Article 11.1;  
International Covenant on Civil and Political Rights, Articles 1, 17;  
Committee on Economic, Social and Cultural Rights, General Comment 4, 'The right to adequate housing';  
Committee on Economic, Social and Cultural Rights, General Comment 7, 'Forced evictions.'

Legal security of tenure, whether through possession of title or lease agreement, among other forms of land/house holding is inextricably linked to other components of the human right to adequate housing, especially freedom from dispossession. It is therefore one of the most widely recognised components of the human right to adequate housing. Legal security of tenure is often instrumental in ensuring access to various services that fulfil key human rights. Legal security of tenure also provides the necessary protection from arbitrary eviction and deprivation, especially for women. Studies have shown a noticeable decline in gender-based domestic violence where women hold title to their house and land.<sup>24</sup>

The *IASC Operational Guidelines* recognise and guarantee legal security of tenure in post-disaster situations.

C.2.6 Specific arrangements should be made to enable women, particularly widows, as well as orphaned children to (re-)claim housing, land or property and to acquire housing or land title deeds in their own name.

In the case of post-tsunami response, during the relief and temporary housing stages, legal security of tenure was relevant mainly in the case of severely affected communities who traditionally lived along the coast. Fishing communities with customary rights over coastal land experienced heightened levels of tenurial insecurity as the government responded to the disaster with renewed vigour in enforcing the Coastal Regulation Zone (CRZ). The CRZ Notification of 1991 restricts housing and other residential activity within 500 metres of the high tide line with a view to creating a buffer zone to protect people from disasters. Many felt that the tsunami and the safety concerns that followed in its wake, were being used to transfer valuable coastal land to non-fishing and commercial interests. This led to huge protests from the fishing community as such a policy would inevitably lead to large-scale evictions and adversely affect their livelihoods.

Following the widespread protest against the strict enforcement of the CRZ, the Government of Tamil Nadu decided not to actively pursue the imposition of the CRZ Notification. It has permitted some NGOs and communities to reconstruct *in situ* while remaining adamant that it will not provide security of tenure through the issue of title or any financial assistance for housing construction within 500 metres of the coast. In places like Kanyakumari, there is no option but to reconstruct *in situ* as most of the area further inland is already built-up. As a result, those who have constructed on their original land may not be able to secure legal title over it in the same manner as those who have agreed to shift to sites further inland. Those who have returned to their original lands, if they didn't already have legal title, remain vulnerable to eviction.

Based on interactions with affected people, we felt that they had little information or opportunities for participation in decision-making with regard to land title, the nature of the document issued and their rights vis-à-vis land holding and the implications of

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<sup>24</sup> Pradeep Panda, *Domestic Violence and Women's Property Ownership: Delving Deeper into the Linkages in Kerala in Property Ownership and Inheritance Rights of Women for Social Protection – The South Asia Experience*, International Center for Research on Women, 2006.

it. For those who were still to receive legal title, there was no adequate information with the community on when it would be given to them.

Social Needs Education and Human Awareness (SNEHA), an NGO working with women in fishing communities in Nagapattinam, has been actively involved in promoting *in situ* housing construction. SNEHA has helped women repair and reconstruct 6451 houses in Nagapattinam and Karaikal districts of Tamil Nadu and Pondicherry. While the process of participation and decision-making is fairly detailed and well-planned, *in situ* construction has meant that while the houses will be in the name of women, SNEHA will not facilitate the obtaining of legal title or *patta*. The group believes that coastal communities enjoy collective customary rights over coastal land. Individual *pattas* are therefore not favoured in coastal areas. While they believe that traditional rights to access and use the coast must be guaranteed, they do not believe that anyone “owns” coastal land, not communities, not the government. SNEHA also believes that the issuance of *pattas* would divide the community and also enable houses and coastal land to be easily sold in the market to non-fishing commercial interests. While this approach clearly safeguards the rights of fishing communities to the coast, the fact is that without legal title, the community continues to be vulnerable to arbitrary evictions.

Land holding in the coastal areas can be quite complicated. In fact more than half the land in the coastal areas is unsurveyed. As explained to us, families belonging to fishing communities rarely have legal title to the land that they live on. Their rights to coastal land are understood to be customary. Land thus held is secured through regularisation based on recommendation from the local panchayat<sup>25</sup> through which *pattas* are obtained. In Kovalam in Kanyakumari district, Praxis, a local NGO in collaboration with the parish council has managed to ‘occupy’ tracts of coastal land for reconstruction of around 50 houses. The parish council had approached the Collector of Kanyakumari and people seemed confident that the ‘occupied’ land would be regularised and individual families would gain legal title.

As per Government Order (GO) 172<sup>26</sup> of the Government of Tamil Nadu, all titles to housing in the post-tsunami scenario are to be issued jointly in the name of the husband and wife in the family with a view to protecting and promoting women’s human right to adequate housing. In some cases, however, there seemed to be lack of awareness of this GO and some people like the parish priest in Keezhamanakudy in Kanyakumari district, assumed that titles to the new land and houses where applicable, would be issued in the name of the person who formerly held title or was the head of the household. In most cases this would be the man of the house.

Similarly, residents living in the temporary shelter in Seruthur in Nagapattinam who expected some permanent houses to be completed by Pongal (14<sup>th</sup> January) 2007 said they had been told by PDA — the organization responsible for providing them with the

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<sup>25</sup> Panchayats are local decentralised governance bodies and include both traditional (for instance the non-elected fishing panchayats) as well as democratically elected bodies (Panchayati Raj Institutions).

<sup>26</sup> See Appendix III for a copy of GO 172, which though extremely restrictive, mandates joint titles.



houses — that *pattas* would be issued only in the name of the man of the household. In Periya Nemelli Kuppam and Pudu Kalpakkam of Kancheepuram district, permanent houses had been constructed *in situ* and all residents said they had legal title. While this maintained the original order in that village, it meant that women were unable to make use of GO 172 to gain joint title with the men. On the other hand, CREED, a local NGO in Chidambaram, had made sure that *pattas* for residents of Pillumedu, Kalaigarnagar and Pallayar for whom they had constructed permanent houses, were issued in the name of the woman of the house.

Due to lack of information and participation, some of the people we met seemed unclear of the nature of the housing document that had been given to them. For instance at the site where Discipleship Centre had built permanent housing in Kovalam, while all families had been provided '*pattas*' there seemed to be some confusion regarding the status of the document. Residents were unclear whether the document issued to them was a legal title or just a license. There was also little clarity on the difference between the two. Some residents were not confident that the document issued to them was the actual *patta* as it included a list of various use conditions, including a prohibition on the sale or rental of the house for a period of ten years.

In Melamanakudy, people had received titles to their houses and land. These titles they said were issued in the name of the husband and wife in the family, and in cases of single person headed households, the title had been issued in the name of the head of the household along with the eldest unmarried child. The document issued here too had similar conditionalities as the one provided in Kovalam.

Residents of Caritas/KSSS Nagar – the permanent housing site for tsunami affected persons from Kottilpadu – did not possess titles to their houses at the time of our visit, but said that titles were with Caritas and would be issued to them “soon.” Similarly, residents at Tazhanguda in Cuddalore district who had moved into their permanent houses around July-August 2006 did not possess *pattas* but also said they would get them “shortly.”

## 2. Access to Public Goods and Services

### International Legal Basis

Universal Declaration of Human Rights, Article 25.1;  
 International Covenant on Economic, Social and Cultural Rights, Article 11.1;  
 International Covenant on Civil and Political Rights, Article 1;  
 Convention on the Rights of the Child, Article 27;  
 International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (e);  
 Convention on the Elimination of All Forms of Discrimination against Women, Article 14.2 (h);  
 Committee on Economic, Social and Cultural Rights, General Comment 4,  
 ‘The right to adequate housing.’

The mere provision of a structure, no matter how secure, does not result in the fulfilment of the human right to adequate housing. Without access to clean water, electricity, sanitation facilities, waste disposal, healthcare, food and education, housing is meaningless. The services provided must be adequate and must be based on the needs

of the community. The government must regulate service distribution to ensure non-discrimination and to prevent corruption. Where private agencies are contracted to provide services, the government must monitor their functioning to ensure that the rights of the people are not compromised in any way, including through checks on price and service delivery.

#### **IASC Operational Guidelines on Human Rights and Natural Disasters**

B.1.1 Measures should be taken to ensure that persons affected by natural disasters, in particular those displaced, have unimpeded and non-discriminatory access to goods and services necessary to address their basic needs.

B.2.1 During and after the emergency phase of the disaster, adequate food, water and sanitation, shelter, clothing, and essential health services should be provided to persons affected by natural disasters who are in need of these goods and services. Provision of goods and services should be without any discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, age, disability or other status.

Adequacy of these goods and services means that they are: (i) available, (ii) accessible, (iii) acceptable, and (iv) adaptable:

- i. *Availability* means that these goods and services are made available to the affected population in sufficient quantity and quality;
- ii. *Accessibility* requires that these goods and services (a) are granted without discrimination to all in need, (b) are within safe reach and can be physically accessed by everyone, including vulnerable and marginalized groups, and (c) are known to the beneficiaries;
- iii. *Acceptability* refers to the need to provide goods and services that are culturally appropriate and sensitive to gender and age;
- iv. *Adaptability* entails that these goods and services are provided in ways flexible enough to adapt to the change of needs in the different phases of emergency relief, reconstruction and, in the case of displaced persons, return.

#### **i. Water**

"We get water only once in three days. It is impossible to continue living like this."  
*Woman in Keezhamanakudy temporary shelter, Kanyakumari district*

Given the indivisibility of all human rights, the failure to secure the right to water results in a reciprocal cycle of deprivation, impeding the enjoyment of related human rights such as the right to adequate housing, the right to food and the right to health.<sup>27</sup>

The right to water has been recognised and upheld as a human right in General Comment No. 15 of the Committee on Economic, Social and Cultural Rights in November 2002.<sup>28</sup> It reaffirms the right to water as indispensable for a dignified human life and for realizing other human rights, in particular the rights to food, health and housing.<sup>29</sup>

No dwelling should be deprived of water because such deprivation would render it unliveable.<sup>30</sup>

<sup>27</sup> Miloon Kothari, "Obstacles to Making Water a Human Right" in *The Human Right to Water*, Eibe Riedel, Peter Rothen (eds.), BWV, Berlin, 2006.

<sup>28</sup> General Comment 15, 'The right to water,' Committee on Economic, Social and Cultural Rights.

<sup>29</sup> Specifically it stated that, "[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses" (para. 2).

<sup>30</sup> Henri Smets, "Le droit à l'eau", mimeo, 2001, pp. 64-70; "The right to water as a human right", *Environment Policy and Law*, vol. 30, 2000, p. 248, cited in the 2002 Annual Report of the UN Special Rapporteur on adequate housing, (E/CN.4/2002/59).

Across both permanent and temporary shelter sites in Tamil Nadu, our main finding was that while water was available in some quantity, it was not sufficient, and generally available in common taps for merely a few hours a day.

At the Tata Relief Committee housing site in Keezhamanakudy, though people had moved into permanent houses in August 2006, the government was still to provide a separate water connection for each house. At the time of our visit in October 2006, people were accessing water from shared taps. Ranchitam complained that water supply was irregular and erratic. She told us that they only got water every alternate day and that too just for a few hours in the evening. Bathing was a problem, not only due to the shortage of water but also due to the absence of a separate bathing area.

Renuka and Regila, who were living in the Keezhamanakudy tar sheet temporary shelters while awaiting the completion of permanent houses being built by RUC, also informed us that water was available only once every three days and it was thus very difficult for them to manage their daily needs.

In the permanent housing site at Melamanakudy, water was available throughout the day in common taps. A choice, however, had been given to those who could afford it, for a private connection of piped water in their houses. Around 60 families had paid Rs. 2700 for the connection while the rest were using public taps. There were two taps for around 30 houses. A family's monthly water bill was approximately Rs. 30.

In Rajakamangalam Thurai, while water supply was continuous, people complained that the water pressure was very low. In Veerabagupathy, access to water was limited as there was only one tap for 58 houses. Pipes had been laid for supplying water to the houses but they were not functioning at the time of our visit. In Keechamkuppam, water was available in the taps for one or two hours everyday; families had to store it in pots for drinking and cooking. At the Pillumedu permanent housing site, women mentioned the difficulty of storing water, as it was available in shared taps for only two hours every morning. At the Caritas/KSSS Nagar permanent housing site in Kottilpadu, Vincent told us that water came for three hours everyday from 9 am to 12 pm. In the temporary shelters in Akkaraipettai, water had to be filled from common taps and stored. Some of the women preferred to walk to the Tata desalination plant, off Salt Road, to collect water as they felt it was cleaner than what was available in the shelter.



*Women wait to fill water in Akkaraipettai, Nagapattinam*

## ii. Sanitation

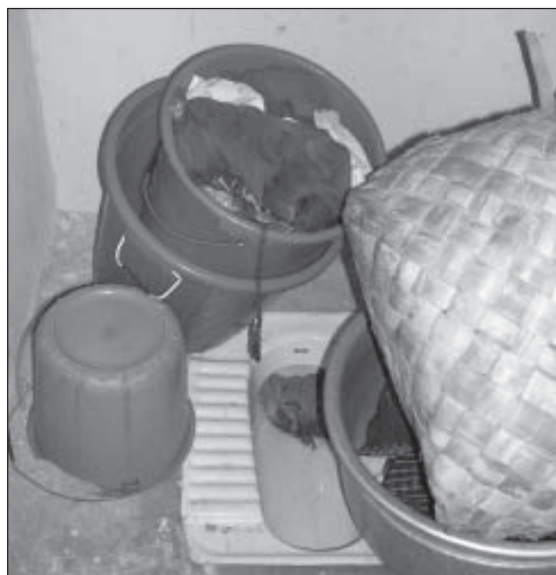
"The government is not bothered about the living conditions in the shelter. You can see the filth and water everywhere. No one cares."

*Resident of Akkaraipettai temporary shelter, Nagapattinam*

The provision of facilities for sanitation, especially for solid waste management, did not seem to be a priority in either the temporary shelters or the permanent housing sites. While an integral responsibility of any local municipality or government agency, sanitation facilities were evidently being denied across the state.

In Melamanakudy, the main complaint with the new houses was the faulty drainage in the bathroom and the fact that the leach pit in the toilets would clog regularly. In the absence of any facility for solid waste management, people dumped household garbage at some distance from the site. They had, however, approached a women's self help group to help them arrange for waste disposal facilities. Similarly, at the permanent housing site built by Discipleship Centre in Kovalam, people said that no leach pit had been provided and some of the toilets had already broken down. There was no facility for solid waste management and the norm was that people disposed their waste in the nearby forest. We witnessed a similar situation in Kottilpadu.

At the Caritas/KSSS Nagar permanent housing site in Kottilpadu, the bathroom included a bathing area but was not connected to a sewage outlet; neither did it have proper drainage facilities. Vanaja from the site told us, "Whenever we use the bathroom, the neighbour's house gets flooded, so we have had to stop using the bathroom." Instead, they were using the nearby fields. At the time of our visit, Vanaja's family was using the bathroom as a storage room.



*Defunct bathroom being used as a storage room in Kottilpadu*

In Akkaraipettai, the situation in the temporary shelters, shockingly, was in many ways similar to what we had witnessed in June 2005 and January 2006, and in many ways, much worse. The poor sanitary conditions in the shelter were glaring. The lack of solid waste management and adequate drainage facilities had resulted in the accumulation of water in the site. It is a well-known fact that stagnant water provides an ideal breeding ground for mosquitoes. With the chikungunya epidemic rampant in the state, the complete oversight of the local government to provide sanitation, proper drainage, and solid waste management facilities was alarming. The toilets were in a complete state of dysfunction. The walls had come apart and the absence of sufficient water and drainage facilities had resulted in unhygienic conditions.



Also in Nagapattinam, people told us that Mata Amritanandamayi Trust was building 330 houses in situ, of which only 275 houses had permanent septic tanks. This was apparently a cause of discontent.

In the temporary shelter at Seruthur, toilets and sanitation facilities were inadequate and women complained of a deficiency of space. Drains had been built only after extensive damage incurred by the accumulation of rainwater in the last monsoon. The



*Poor sanitary conditions at Akkaraipettai temporary shelter resulting from government neglect*



*Common toilets at the Ernavoor "semi-permanent" shelter*

common toilets and bathrooms located towards the end of the site had undergone significant wear and tear. In Ernavoor, Chennai, the common toilets did not have proper doors or drainage facilities.

In Keechamkuppam in Nagapattinam, most of the families, with the help of SNEHA, had rebuilt their houses in the original locations. Traditional houses of the fishing community however, do not have inbuilt toilets or bathrooms. Instead people use the beach. But women said they were bathing in a covered shack like structure close to their houses, as they needed privacy. Some of the women like

Sashikala expressed a desire for separate toilets while others like Revathy did not like the idea of a toilet being close to the house as she felt it was unhygienic and would result in unpleasant odours in the house. The confusion and myths among the women were evidently a result of the absence of informed participation. An NGO called HOPE had conducted a survey in the community and had agreed to build toilets for those who wanted them. While it was encouraging to see that the community had returned to their original lands and had been able to rebuild their



*Stagnant water and uncleared garbage create health risks in Keechamkuppam*



homes, it was disconcerting to see that there was a complete lack of solid waste management in the area. Collection and disposal of waste, which is clearly the responsibility of the municipal authorities, had been totally neglected. As a result, Keechamkuppam was surrounded with pools of stagnant wastewater and piles of uncleared garbage, which increased the risk of contracting chikungunya and other vector-borne diseases in the area.

At the time of our visit to the permanent housing site in Pillumedu in October 2006, a septic tank was being built which was slated to be ready in a month, after which the toilets would be functional. Until then people had to bathe outdoors.

Although people everywhere were extremely concerned about the lack of sanitation and waste disposal facilities and had raised the issue repeatedly, mechanisms for their direct participation and grievance redressal were largely absent. The government had done very little to address their concerns.

"States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas ... to ensure ... the right ... to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications..."  
*Convention on the Elimination of All Forms of Discrimination against Women, Article 14.2 (h)*

The gross failure to provide basic sanitation services across the state reflects a serious abrogation of state responsibility. In the absence of adequate sanitation services, women are being forced to use public spaces to meet basic human needs. This, while greatly threatening their security makes them vulnerable to violence and abuse, including sexual violence.

### **iii. Electricity**

Amongst all the essential services, electricity was the most regular as the state government had, in most areas, made provisions for electrical connections and supply. In some permanent housing sites, electricity had still to be provided, as in the RUC houses in Keezhamanakudy.

The situation, however, is not perfect across the state. The temporary shelter located on the beach in Rajakamangalam Thurai was hit by a massive high tide in May 2006 in which 16 families lost their homes. Since the incident, electricity supply had been disconnected. People had lodged repeated complaints but at the time of our visit in October 2006, nothing had been done to restore electricity supply to the site.

In the Kottilpadu temporary shelter, residents complained of the erratic electricity supply. Though they admitted that the situation was better than when they first moved in. While electricity supply was regular in the permanent housing site at Kalaigarnagar, residents mentioned that the voltage was very low and fluctuated greatly, which is why they could not use fans or mixers. Voltage only stabilised late at night, after 10 pm.

#### iv. Adequate Food

"Today we caught some sardines, so we have a little money. But we don't know if we will have enough to eat tomorrow."

*Woman in Rajakamangalam Thurai temporary shelter, Kanyakumari district*

The right to food is a human right in and of itself, and the right to access adequate food is also an integral component of the human right to adequate housing.<sup>31</sup> All residents must be able to access food that meets their nutritional, dietary and cultural needs. After the tsunami, with relocation of housing sites, disrupted livelihoods and fall in income levels, the right to access adequate food has been greatly affected.

In India, government-subsidised public distribution system (PDS) outlets or ration shops are an important means of ensuring people's access to food, even though the PDS system is rife with problems such as shortages and poor quality food supplies. The post-tsunami scenario has seen some impacts on people's ability to access rations. Several permanent housing sites like Melamanakudy were situated far from ration shops though people were hopeful that a ration outlet would be set up in their colony within a month. In Veerabagupathy, none of the residents had ration cards and complained of the distance to the nearest ration store. In the Kalaighnagar permanent housing site where the Irula community lives, only 50 members had ration cards as well as Scheduled Tribe (ST) certificates and voting cards. The rest of them had applied for these around six months back and were still waiting. All other legal documents were contingent on receipt of the ST certificate. Though the ration shop was close to the site, most residents had to purchase supplies from other outlets where rice cost between 10–15 rupees per kilogramme, compared to two rupees in the ration store.

With changes in fish catch and altered livelihoods, nutritional intake had suffered severely in the immediate aftermath of the tsunami. While the situation had largely improved across the state, in a few areas we still heard complaints. In Rajakamangalam Thurai, the women worked mainly as fish vendors and their income fluctuated with seasonal variations. On the day that we visited them, they had a good catch of sardines but were not sure that they would be as lucky the next day. They lamented that their economic situation was so dire that buying food was still difficult.

Participation in the choice of site might have ensured that it was located closer to the coast to ensure continued fishing activities as well as its proximity to a PDS outlet. Ration cards and access to good quality supplies in all PDS outlets is a basic requirement to realising the human right to food.

<sup>31</sup> General Comment 12 of the Committee on Economic, Social and Cultural Rights (1999) on 'The right to adequate food' clearly identifies the normative components of this right as well as state obligations. The Committee declared that "the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement." For more information, see: <http://www.ohchr.org/english/issues/food/index.htm>

## v. Education<sup>32</sup>

The right to education has been guaranteed as a human right in international law as well as in the Indian Constitution. Recently, the right to education at elementary level was made one of the Fundamental Rights under right to life and personal liberty by the eighty-sixth constitutional amendment of 2002. Housing is not considered adequate unless it ensures proximity and accessibility to education for all children.

In all sites that we visited, children had resumed going to school though this did not necessarily mean that access was adequate or without difficulty. The new locations for permanent housing sites in some places were further away from the original schools thereby creating a financial burden on families to continue sending their children to school. The school was located two kilometres away from the Veerabagupathy permanent housing site. Parents found it expensive to send their children to school as it cost two rupees one-way by bus. There were no facilities for childcare – neither an *anganwadi* (Integrated Child Development Services (ICDS) centre) nor a crèche. Similarly, in Pillumedu and Kalaigarnagar, mothers expressed a strong need for an *anganwadi* for their children at the site. In the immediate aftermath of the tsunami, UNICEF had set up an *anganwadi* at the temporary shelter in Pillumedu but they had suspended the service. While the primary school was close by, the secondary school was at a distance of three kilometres, in Killai.

In Keezhamanakudy, children had resumed going to school. Concern India Foundation with support from Aviva Life Insurance had helped reconstruct the building since part of the school had been destroyed by the tsunami. Since the government provision of one teacher for two classes was not adequate, RUC had arranged for and was paying four extra teachers. The school was up to the eighth standard after which students had to study in Nagercoil and Kanyakumari. RUC was also running training programmes for teachers as well as computer classes in Keezhamanakudy.



*Reconstructed school building in Keezhamanakudy*

In Pallayar, the original school located on the coast was destroyed by the tsunami. We were informed that the government in collaboration with Shastra University had spent Rs. 4 lakhs to rebuild the school at the same site. But the children were still so afraid of being close to the coast that the new school building was lying abandoned. Had adequate consultations been held with children and their parents, their fears would have

<sup>32</sup> This report only focuses on the element of access to education. We have not assessed the quality and nature of education being provided to children in the post-tsunami context.

been apparent and the new school could have been built at an alternate site where the children would have attended.

## **vi. Healthcare**

The right to health as well as the right to access healthcare are both internationally recognised human rights. Furthermore, it has been recognised that conditions in the housing environment have direct consequences for enjoyment of the human right to health.<sup>33</sup>

"States must ensure provision of health care, including... nutritiously safe food and potable drinking water, basic sanitation and adequate housing and living conditions."  
*Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000)*

The provision of health services seemed to be more of a priority in the post-tsunami relief phase. The current situation in the temporary and permanent shelters, however, revealed that people had to largely fend for themselves. Regular visits from doctors and monitoring of health were not common.

In Keezhamanakudy, compared to the number of NGOs working in the area immediately after the tsunami, almost two years later, only a few government and diocese approved NGOs remained. TVS had recently set up a clinic in the absence of a government primary health centre since the village did not meet the government requirement of a population of 5000 for one primary health centre. In Melamanakudy, people told us that the doctor came to their original village for one or two hours a day, but not to the new permanent housing site. An NGO representative came once a week for psychological counselling though the women felt that they had overcome their initial fears and trauma.

In the Kottilpadu temporary shelter, Social Change and Development (SCAD) had set up a medical centre; a nurse came for a few hours daily while a doctor visited once a month. With the rampant spread of chikungunya in the area, increased medical attention or health services had not been provided even though almost 99% of the people in the shelter had been inflicted with it. In Akkaraipettai too, people were afraid of the widespread prevalence of mosquitoes given the high incidence of chikungunya in the area. The absence of sanitation facilities had exacerbated the situation and stagnant water provided the ideal breeding ground for such mosquitoes. Doctors did not visit the shelter; only a few college students had distributed preventive tablets that apparently had not worked.

For the people living in the temporary shelter at Rajakamangalam Thurai, there was no healthcare facility nearby; neither did a doctor visit the shelter. Similarly, those in Veerabagupathy complained of the remote location and the difficulty in accessing healthcare.

<sup>33</sup> *Health Principles of Housing*, World Health Organization, Geneva, 1989. Also see, General Comment No. 14. 'The right to the highest attainable standard of health' (2000), Committee on Economic, Social and Cultural Rights.

### 3. Accessibility

Accessibility of all to the human right to adequate housing is critical for the full realisation and implementation of this right. This component of the human right to adequate housing therefore ensures that all people regardless of descent, gender, sexual orientation, religious or political affiliation, age, education, disability and financial status among other attributes, have access to this right. Understood from a substantive equality perspective, accessibility requires that all historically disadvantaged groups must be allowed full and sustained access to adequate housing and resources, including land. All actors in the post-tsunami reconstruction efforts — government and non-government — must ensure that all people, especially the most vulnerable, have access to the human right to adequate housing.

#### **International Legal Basis**

Universal Declaration of Human Rights, Article 1;  
Convention on the Elimination of All forms of Discrimination against Women, Article 14.2 (h);  
Convention on the Rights of the Child, Article 27;  
International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (e);  
International Covenant on Economic, Social and Cultural Rights, Article 11.1;  
Committee on Economic, Social and Cultural Rights, General Comment 4, 'The right to adequate housing.'

Information and participation are key to ensuring that the human rights of the most vulnerable and marginalised are protected, promoted and fulfilled. The nature of the decision-making process is also critical in determining the kind of decisions that are made and whether the concerns of the most marginalised are taken into account.

Kottilpadu was one of the worst hit areas in Kanyakumari district. At the time of our visit in October 2006 most people had shifted to their permanent houses but around 26 families were still living in temporary shelters. Everslin, one of the women living in the temporary shelters, told us that the process of selection of families for permanent houses had initially been very problematic and many had not been included in the preliminary list. It was only after much negotiation that the list had been rectified to ensure that everybody was entitled to a permanent house. When asked when she would be allotted her permanent home, she said that she didn't know.

One of the most glaring examples of the denial of accessibility to the human right to adequate housing was in Rajakamangalam Thurai. Residents of this site belong to the fishing community. Soon after the tsunami, which destroyed many of their houses, some families were moved to a school nearby while others were accommodated in a church building. Although most tsunami-affected families had received temporary shelters by January 2005, it was only after protesting against the lack of provision of temporary shelters by both the government and NGOs that the government allotted them temporary shelters in April 2005. In October 2006, there were 46 families living in the temporary shelters without access to electricity and sufficient water.



It is shameful that despite the overwhelming response in terms of both human and financial resources in the aftermath of the tsunami, an entire community had been left out by both the government as well as the numerous local and international NGOs involved. Even now when they should have been provided permanent houses, they are forced to live in inadequate government provided tin sheds. Had there been a comprehensive needs assessment using participatory methodology this serious lapse could probably have been avoided.

"States Parties undertake to prohibit and to eliminate racial discrimination ... and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, ... in the enjoyment of ... the right to housing..."  
*International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (e)*

In most of the tsunami-affected villages, the fisher people's panchayats, which are essentially caste panchayats, have been the main bodies involved in decision-making while in the Kanyakumari region the parish councils have played a significant role. As a result, in cases where limited funds are available and NGOs cannot provide for the entire community, it is the caste panchayat or the parish council that has decided on who should be allocated housing as a matter of priority. For instance, in Kanyakumari, district where an NGO was unable to provide housing for all the residents of the village, it had to depend on the parish council for providing a list of the most vulnerable members of the community. The final list, however, included the names of many influential people in the community while many of the most vulnerable had been left out.

If biases and prejudices within communities are not addressed adequately it could result in denying some of the most vulnerable people access to their human rights. For instance, the Praxis team faced a lot of resistance from the local community in Kovalam when finalising plans to construct a house for an old widow who lived in a hut prior to the tsunami and therefore, according to many in the community, did not deserve a house that was the same size as the others.

In Pudu Kalpakkam, 112 of 168 families lost their homes to the tsunami, while the remaining houses had been severely damaged. Some of the women we met at the site informed us that Women's Collective was constructing permanent housing mainly for those whose houses had been completely damaged. There were, however, several families whose houses, although still standing, were completely uninhabitable. Megatamma, a disabled widow was constructing her house when the tsunami struck. Although her house was not completely destroyed, it had been severely damaged and was uninhabitable. Megatamma had appealed to Women's Collective for help with restoring her house but due to budget constraints the Collective could not assist her. Women we spoke to in the community felt that special cases like Megatamma's should be considered even though they had not lost their houses. A comprehensive needs assessment conducted with active community participation is therefore essential for prioritising beneficiaries and ensuring that the most vulnerable are not neglected and denied their human rights.

SNEHA, a Nagapattinam-based organization that helped fishing families build *in situ*, broadened its criteria for selecting beneficiary families to include:

- i) those directly affected by the tsunami;
- ii) small fishers (i.e. those who did not own trawlers);
- iii) those who did not have big houses;
- iv) older persons, especially single old men and old women;
- v) fish workers (i.e. those who do not own boats but work on other people's boats and get a share of the earnings);
- vi) fish vendors (those who sell fish caught by others).

The broadening of criteria acknowledges the existences of disparity within communities and therefore prioritises the needs of the most vulnerable. It is important that based on these criteria, the final selection of beneficiaries is done with the help of people who know the community well.

Accessibility also implies physical accessibility to housing, which means that the needs of persons with disabilities, older persons, and persons living with illness, must be accommodated. This factor was shockingly absent across permanent housing sites in Tamil Nadu and Pondicherry. Not one of the houses we visited had special provisions for persons with disabilities. This is in violation of international human rights law.<sup>34</sup>

#### 4. Habitability

##### International Legal Basis

International Covenant on Economic, Social and Cultural Rights, Article 11.1;  
Convention on the Elimination of All forms of Discrimination against Women, Article 14.2 (h);  
Committee on Economic, Social and Cultural Rights, General Comment 4, 'The right to adequate housing.'

Habitability is central to the realisation of housing as a human right. Housing from a human rights perspective cannot be considered habitable if it does not provide the necessary space required to live with security and dignity. Additionally, a habitable house must not only have adequate space but also must not be located in areas that are hazardous to human health. The building materials must also be safe and non-toxic. Housing in low lying areas, which is prone to flooding or which does not provide adequate protection from the wind or rain cannot be considered habitable and therefore the provision of such housing can be said to be in violation of international housing rights standards.

Provision of adequate space requires detailed individual family analysis for which local community participation is essential. Community participation must involve women as

<sup>34</sup> The UN is currently in the process of finalising the *Draft Convention on the Rights of Persons with Disabilities*, which once adopted, would greatly strengthen the international legal guarantee of the human rights of persons with disabilities.

adequate space and women's security and privacy concerns are inextricably linked. One of the main complaints with both temporary and permanent housing in the post-tsunami rehabilitation context has been the acute shortage of space. Temporary structures built after the tsunami were largely one-room units of 12 feet x 12 feet, in which entire families of 6-8 members were expected to live. In such situations, some of the worst sufferers were women and adolescent girls, as they could not even change their clothes in privacy. Overcrowding and cramped living conditions are also known to promote the spread of infectious diseases, and have direct impacts on women's health, in particular their mental health. All temporary shelters, since they have been in use for almost two years now, have undergone significant wear and tear and are in a dire state of disrepair, making them entirely uninhabitable.



*Lack of space and cramped living conditions in the Akkaraipettai temporary shelter*



*Torn uninhabitable tar sheet shelters*

In permanent housing too, the lack of adequate space has been a major problem. Even though most houses had one small living room, one bedroom and one small kitchen, the space was not sufficient to accommodate all members of the family. When asked about the changes that people would like to make in their house, most of them, especially women, said they would have preferred an additional bedroom.

The Tamil Nadu government's policy of one house for one house meant that no matter how large the original house (many houses were quite large and accommodated up to three nuclear family units), a standardised house of 350 square feet would be provided as compensation. The houses were therefore insufficient to accommodate joint families. As a result, many smaller family units within joint families who could not afford alternative accommodation had been compelled to live in the uncomfortable temporary shelters.

Very often, flawed construction techniques, low quality construction materials, or negligence, results in uninhabitable housing. In both Pillumedu and in Caritas/KSSS Nagar in Kottilpadu, people already complained of cracks in the walls and leaking roofs. With the winter monsoon approaching, this was a cause of great concern. Strict and close monitoring of construction processes and materials as well as the insistence on techniques like “weathering” could have prevented these problems from arising within a few months of construction. Apart from monitoring by government agencies, it might have been useful to provide the beneficiaries with basic training so that they could have actively participated in the construction of their homes by monitoring the construction processes as well as the quality of materials used.

A house can be only considered habitable if it provides all basic necessities and accommodates people’s most essential requirements. Our interactions with most of the people who had been provided with permanent housing brought out their concerns over the size of the kitchen. Many including Vanaja living in Caritas/KSSS Nagar in Kottilpadu as well as women in Melamanakudy, Keezhamanakudy, Pillumedu and Tazhanguda, to name a few sites, said that the kitchen provided was too small. Additionally most women had to cook outside the house since the design of the kitchen was not conducive for cooking with firewood. For Vanaja the problem was more acute since, unlike in other sites, there was no space behind the house to set up a makeshift kitchen.



*The kitchen in TRC houses at Keezhamanakudy is not conducive to cooking with firewood*



*The windowless narrow space provided for cooking in Veerabagupathy was only being used for storage purposes*

In Veerabagupathy, the problem of an inadequate kitchen took on completely different dimensions because the houses constructed by Habitat Technology Group did not have a separate kitchen space. Instead, people were expected to use part of the L shaped living room as a kitchen. This was not possible, they told us, not just because it was inadequate in terms of space but also because there were no inbuilt shelves or platforms for cooking.

It was obvious that had adequate consultations with communities been held before housing plans were finalized, many of the current problems with design

*"If given a choice, I would not have built the house like this."  
Woman at the Veerabagupathy permanent housing site, Kanyakumari district*

and space regarding kitchens could have been prevented. In the context of participation, it is noteworthy that effective participation cannot take place under conditions of great stress and desperation. When we asked why the people of Veerabagupathy had not objected to the absence of a kitchen in the house, one person candidly said, "We had been waiting very long for some kind of housing. We were desperate and did not want to jeopardize our chances by protesting."

As in the case of kitchens, most people said that toilet facilities were far from adequate. In several sites the toilets were not functional. In others, bathing areas had not been built as in Pudu Kalpakkam, Kovalam and Keezhamanakudy. While the absence of bathrooms did not concern men much as they could easily bathe outdoors, it severely affected women. This again was a result of non-existent or flawed consultative processes. In Pudu Kalpakkam, consultations were held with the fisher people's panchayat, which is a male-only body, and does not necessarily provide space for women's concerns to be raised. In Kovalam, residents told us that consultations with the community had not taken place at all as in Melamanakudy.



*Inadequate toilets with insufficient space for bathing*

## 5. Affordability

### **International Legal Basis**

International Covenant on Economic, Social and Cultural Rights, Article 11.1;  
Convention on the Rights of the Child, Article 27;  
Committee on Economic, Social and Cultural Rights, General Comment 4, 'The right to adequate housing.'

In the present context of post-tsunami reconstruction, affordability is often a comparatively less discussed component of the human right to adequate housing. Affordability essentially means that expenditures related to housing must be commensurate with income levels so that basic needs are not compromised. Affordability as a component of the human right to adequate housing makes it incumbent on the state to provide subsidised housing or to make loans available at subsidised rates. The



aim is that income levels must not determine one's access to the human right to adequate housing.

"Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - **all at a reasonable cost.**" (emphasis added)  
*Commission on Human Settlements' Global Strategy for Shelter to the Year 2000 (1998)*

In the context of temporary housing, affordability was not a great concern, as temporary housing was made available to all survivors at no cost. It became an issue only when linked with the location component of the right, as the location of temporary shelters in remote areas often led to a sharp increase in commuting expenses, thereby adversely impacting upon people's access to basic services.

In the case of permanent housing, however, affordability was cause for concern in some cases. For instance, in the case of housing being built by RUC in Keezhamanakudy, although the house was being provided free of cost, land had to be bought by the beneficiaries. Given that land is a highly coveted and scarce resource in Kanyakumari, most affected families were initially unable to purchase this land. We were told that it was only after the intervention of the District Collector that land prices were brought down to Rs. 4,000 – 5000 per cent, thus enabling some families to buy the required three cents of land for housing construction. Since Praxis was not able to get similar assistance for its housing project in Rajakamangalam Thurai, it had to pay up to Rs. 15,000 per cent and therefore had to limit the number of houses it could construct. At these rates it would have been impossible for the beneficiaries to buy land on their own.

As mentioned earlier, affordability also entails the availability of finance at subsidised rates to enable people to access their human right to adequate housing. The absence of any provision on behalf of the Government of Tamil Nadu to make such finance available, especially to those whose houses were not destroyed but damaged by the tsunami, is a violation of the human right to adequate housing. Most NGOs too, except probably SNEHA, did not have any such provision for housing finance. As a result, for Megatamma (see section on *Accessibility*) in Pudu Kalpakkam and several others who are forced to live in uninhabitable damaged homes, the provision of finance for repair would have gone a long way in fulfilling the human right to adequate housing.

## 6. Location (and Access to Livelihoods)

### International Legal Basis

International Covenant on Economic, Social and Cultural Rights, Article 11.1;  
Convention on the Elimination of All forms of Discrimination against Women, Article 14.2 (h);  
Committee on Economic, Social and Cultural Rights, General Comment 4, 'The right to adequate housing.'

Location, as a housing rights element, should be conducive to safety, sustainability and connectivity. Adequate housing must be reasonably situated to allow for access to employment options (the right to livelihood), healthcare, education and other social services and civic amenities. The financial and temporal cost of transport must not place excessive financial and other demands on the household. In addition, housing must be in a location that is safe, particularly from environmental hazards and pollutants.

The *Guidelines for Reconstruction of Housing affected by Tsunami in Tamil Nadu* issued by the Government of Tamil Nadu also specify that: “The sites need to be close to the present settlement. It should preferably be within a distance of one km from the present settlement so as to facilitate the fishers to carry out their economic activities easily.”<sup>35</sup>

Despite this recommendation, several housing sites are located much further from the coast and though they meet the criteria of safety, do not necessarily facilitate access to livelihoods as before.

After strong people’s mobilisation and much lobbying with the government, construction of houses has been permitted within the Coastal Regulation Zone (CRZ), i.e. within 500 metres of the high tide line, in most parts of Tamil Nadu. The government, however, has refrained from providing support for such reconstruction and has refused to legally recognise communities’ customary rights to the coast. Most NGOs too, especially those that have signed memorandums with the government, have chosen not to build close to the coast. In a few instances, this decision has been based on inputs from the community, but overall it is NGOs and the government that have taken decisions on location of permanent housing sites without consulting communities. In those projects where the government has allocated land for housing, neither the NGO responsible for construction nor the community had any choice in the site location.

One of the few organizations that has worked on *in situ* reconstruction is the Nagapattinam-based Social Needs Education and Human Awareness (SNEHA). SNEHA has provided support to 6451 low income and marginalised families for reconstruction or repair of their houses in their original locations in Nagapattinam and Karaikal.

At the time of our visit in October 2006, most of the construction in SNEHA’s projects had been completed. The families we met in Keechamkuppam seemed quite pleased and well settled in their new houses in their original village community. Revathy, the mother of a one-and-a-half year old boy said she was not afraid of living near the coast since they had always lived there. She, like another woman, Kaliyamma, had added Rs. 5000 to the Rs. 50,000 given by SNEHA and built a new house more or less along the same design as the original house. The women were grateful to SNEHA for helping them rebuild their houses in their original village, especially as the permanent housing being offered

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<sup>35</sup> *Guidelines for Reconstruction of Housing affected by Tsunami in Tamil Nadu*, Revenue Administration, Disaster Management and Mitigation Department, Government of Tamil Nadu: [http://www.archidev.org/IMG/pdf/General\\_Technical\\_Guidelines\\_-\\_Part\\_1.pdf](http://www.archidev.org/IMG/pdf/General_Technical_Guidelines_-_Part_1.pdf)

was too far from the coast. Since they were a fishing community, they needed to live by the coast for practical purposes. Easy access to the coast also enabled them to store their fishing gear on the beach. A few of them like Mala, however, expressed a preference to live away from the coast during the monsoons when the tide was too high to fish and when there was a potential threat of sea water entering their homes.



*SNEHA supported house built in situ in Keechamkuppam*

In most of the other permanent housing sites that we visited, residents expressed the safety versus livelihood dilemma. Women particularly, seemed more satisfied than the men at having been relocated further away from the coast, as they felt their children were safer. This was evident in Melamanakudy, which though further away from the sea than the original houses and temporary shelters, was preferred as women said they were not worried for their own safety or for the safety of their children any more. They also felt that their children were happier in the new site.

Men, especially those who fished daily and were living more than a kilometre away from the coast, expressed concern over the difficulty in continuing with fishing activities, including storing fishing gear and travelling longer distances to reach the coast. This was the case at the Discipleship Centre permanent housing site in Kovalam located 1.25 kilometres from the sea. While women said they preferred this site for security reasons, they admitted that it affected their livelihood as they could not gauge when it was suitable to go fishing from this distance. We heard that they had requested for a bus service to the coast as well as the construction of a watch tower at the site to enable them to observe the sea in order to determine when to fish.

At the Kottilpadu temporary shelter situated right on the beach, people expressed a fear of living so close to the sea and said they were looking forward to moving to permanent houses further inland. Similarly in Rajakamangalam Thurai, people in the tin shelters located on the coast said they would feel much safer once they moved as a community to the permanent housing site.

Residents of Veerabagupathy complained of the inconvenient location of this permanent housing site. Though this was one of the unusual sites where each family had paid for their land, they were still not satisfied with the venue, as it was far from all essential services. Communication was also difficult as there was no public call office in the vicinity and only one person in the community had a mobile phone. People commuted mainly by bicycles and autorickshaws. Since the site was quite isolated and surrounded by trees, many felt scared, especially of snakes.

The most severe complaint of the community living in “semi-permanent shelters” in Ernavoor, Chennai, was that the site was located 6-7 kilometres from the coast, making it impossible for fishermen to resume their regular livelihoods. Apart from the increased expense and time for commuting, they had no place to store fishing gear. Since the majority of them were labourers and not boat owners, they did not enjoy a daily guarantee of securing work. To commute to the coast by autorickshaw, cost them around Rs. 40. In the event that they were not able to get work on a given day, they suffered a complete loss of their transportation cost. This was not feasible in terms of sustaining their livelihood. Their most urgent demand was that permanent housing be provided near the coast. The site of permanent housing for them, Thoraipakkam, however, is also located far from the coast, which is why fishworkers in the community were extremely unhappy. Around 25% of the community had gone back to the coast and used their own resources to repair their original homes. But the majority did not have the capacity to do so, especially since access to most of their original sites had been barred. They had no information as to when permanent housing would be ready and had been told that they would probably have to live in these “intermediate” shelters for another two years. The school was also far from the site. Initially an NGO had provided a bus service but this facility had been suspended.

In Caritas/KSSS Nagar – the permanent housing site at Kottilpadu – women raised the issue of the lack of space for children to play, including the absence of a children’s playground. While some families were keen to move back to their original houses along the coast, many expressed a fear of living so close to the sea again. We were informed that in Pallayar the government had allocated swampy lands, some of it wetland and mangroves, for permanent housing.

In Pillumedu, almost everyone we spoke to said that their former houses were closer to the coast but apart from that factor they preferred the new location as it was near the market and schools. They felt more secure living slightly further away from the sea. Women, however, complained that the *anganwadi* (ICDS centre) was too far. The site had no public phone booth. A few of the fishermen said they had cell phones. Kalaigarnagar located close by, also did not have a phone booth. And unlike in Pillumedu, no one in this community owned a cell phone. Communication was thus a problem, especially in times of emergency.

A new predicament that has arisen in the post-tsunami context is the selective implementation of the CRZ, where commercial development is being promoted under the guise of safety. According to a report by ActionAid,<sup>36</sup> there have been relentless efforts to implement the Swaminathan Committee Report that redefines the vulnerability line and determines the safe distance for habitation. The Coastal Zone Management (CZM), as recommended by the Committee, threatens traditional land rights of the coastal community. Unfortunately, the safe distance demarcation as proposed by CZM is applicable to the coastal community but not to industry and other commercial

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<sup>36</sup> *Deprivation of Land Rights of Coastal Communities: A Situational Analysis of Chennai and Thiruvallur Districts*, North Tamil Nadu Hub, ActionAid India International, October 2006.

developments along the coast. For instance, in Chennai, Marina Beach is being coveted for its high tourism and commercial potential. The government is inviting tourism developers while threatening to relocate fishing communities using the argument of safety to shift them away from the coast. This discriminatory implementation of the CRZ is extremely problematic. Furthermore, efforts are underway to amend and dilute the CRZ in an attempt to allow commercial development along the coast, which threatens fishing communities' customary rights to the coast.

## 7. Physical Security and Privacy

### International Legal Basis

Universal Declaration of Human Rights, Articles 3, 12;  
 International Covenant on Civil and Political Rights, Articles 9, 17;  
 International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (b);  
 Convention on the Rights of the Child, Article 16;  
 Committee on Economic, Social and Cultural Rights, General Comment 4, 'The right to adequate housing.'

Every man, woman, youth and child has the right to live in a secure place and to be protected from threats or acts that compromise their mental and/or physical well-being or integrity. The state and other involved actors must address the security needs of the community, in particular, the needs of women, children, the elderly, persons with disabilities, and other vulnerable and marginalised individuals and groups. Housing must instil a sense of security in the individual as well as in the community.

### Human Right to Security of Person

*Article 9, International Covenant on Civil and Political Rights, 1966*  
 Everyone has the right to liberty and security of person.

### Human Right to Security of the Home

*Article 17, International Covenant on Civil and Political Rights, 1966*  
 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.<sup>37</sup>

Violation of the right to physical security and privacy most seriously affects women, and thereby implies the simultaneous violation of the right to gender equality and non-discrimination. The failure to provide secure housing conditions with adequate space for women can have adverse consequences on the health and safety of women. The element of safety has two dimensions: safety of the house itself and safety within the house, which implies protection from violence, especially sexual violence. Studies have shown that the presence of an extra room in the house greatly reduces the incidence of violence against women.<sup>38</sup>

<sup>37</sup> As mentioned before, the male-specific language of international human rights treaties is understood to include women.

<sup>38</sup> For instance in Sri Lanka with reference to the 'line houses' in tea estates, women found that lack of space was one of the main reasons for sexual abuse and domestic violence.



With most people across Tamil Nadu still living in one room temporary shelters, for almost two years, the violation of the requirement for adequate space for women is glaring. This was a recurring complaint we heard from women across shelters in Tamil Nadu. Nothing had improved for women in temporary shelters since our last fact-finding mission in June 2005. Though they had requested partitions within and complete walls between shelters, no attention had been paid to their concerns. In the temporary shelters at Keezhamanakudy, the partitions between shelters did not go up all the way to the ceiling thereby threatening women's right to privacy. Women could not even change their clothes without feeling threatened. This was also the case in temporary shelters in Seruthur, Akkaraipettai, and Rajakamangalam Thurai. In Kottilpadu, women lamented the cramped living conditions in the temporary shelters, the lack of privacy and the lack of space for children.

*"We don't feel safe here. People can easily look in to the rooms from outside."  
Young woman in Keezhamanakudy temporary shelter*

The common toilets in temporary shelters, which inadequate to begin with, had become much worse over time. In many places the doors and walls had come apart and the absence of sanitation facilities, including water and drains, had rendered the toilets entirely inoperative. Most women were bathing in makeshift tents and in confined spaces behind or between shelters. This posed serious threats to their personal security and also violated their right to health as they were unable to bathe properly due to the lack of space and privacy.



*Women feel insecure in the tar sheet shelters as the walls do not reach the ceiling*

In Kovalam, despite the fact that permanent houses had been allocated to families, there was no space to bathe in the attached toilets. This was a grave problem, especially for younger women and girls. Unlike the men they could not bathe outdoors under the common tap, and hence were forced to bathe in the cramped toilet. This was also the case in Veerabagupathy. In Keechamkuppam too, though many women were against the concept of attached toilets, they needed a proper space for bathing, in the absence of which, they were using a makeshift shack set up for the purpose.

Women and children require safe, secure and adequate spaces to bathe in. The absence of adequate facilities for toilets and bathrooms in most housing sites means that women are forced to use outdoor public spaces, which greatly increases their vulnerability to sexual abuse and violence. The highest incidence of abuse and violence against women

is reported to take place during such times. The lack of adequate lighting and absence of electricity, as in Rajakamangalam Thurai, also threaten women's personal security.

A few women in the Kottilpadu temporary shelter admitted that alcoholism was a problem and spoke of the incidence of fights and arguments caused by inebriated men. While alcoholism and related violence against women is a chronic issue across various communities, including the fishing community, it is seldom viewed as a problem, and worse still, the culture of silence pervades amongst the women who view it is a "normal" and "internal" issue; one that is not discussed but quietly accepted.

At Caritas/KSSS Nagar in Kottilpadu, the front of the house had been dug up for more than a month in order to lay drainage pipes. This impeded access to the house, especially for children and older persons. Vanaja said that her mother had fallen and injured herself while trying to cross the pit. Safe access to housing is also a criterion for ensuring adequate security.



*Toilets built at the Veerabagupathy housing site contain no space for bathing*



*Precarious access to houses in Kottilpadu*

None of the permanent houses had provisions for persons with disabilities; neither did they specifically accommodate the needs of older persons and those living with illness. This reveals a glaring insensitivity towards, and disregard for, the concerns of these populations as well as the failure to consult with them and include them in planning and decision-making processes. The lack of child-friendly spaces in some of the sites violates children's rights to security as well.

The inclusion of all members of the community, in particular women and persons with disabilities, in designing housing as well as in deciding the allocation and use of space would have ensured that the temporary shelters and permanent houses accommodated their special needs and did not violate their rights or increase their vulnerability and fear.

## 8. Cultural Adequacy

### International Legal Basis

International Covenant on Economic, Social and Cultural Rights, Articles 11.1, 15;  
International Convention on the Elimination of All Forms of Racial Discrimination, Article 1;  
Convention on the Elimination of All Forms of Discrimination against Women, Article 3;  
Committee on Economic, Social and Cultural Rights, General Comment 4, 'The right to adequate housing.'

An often-neglected component, cultural adequacy is critical to the promotion, protection and fulfilment of the human right to adequate housing. Housing configuration, spatial design, site location, and community organization should be determined locally and in harmony with a community's cultural preferences and attributes. The state and other involved actors must enable cultural expression and diversity, and should ensure the participation of all cultural/religious groups in planning housing. A failure to do so would imply not just disrespect for communities and their ways of living, but could also result in unnecessary conflict or tension.

The lack of participation in housing design and location, including the absence of prior informed consent of the community before finalising permanent housing plans has resulted in the compromise of cultural adequacy of housing in several sites across Tamil Nadu.

"If only they had asked us, we would have told them to build an outdoor kitchen.  
This small kitchen is of no use as we cannot cook with firewood indoors."  
*Woman in Kottilpadu, Kanyakumari district*

A glaring disregard for the fishing community's cooking practices is revealed in the inadequate kitchens that have been provided in all permanent housing sites. Ranchitam from the TRC shelter in Keezhamanakudy complained that the new kitchen was too small and lacked adequate ventilation to cook with firewood, which is why she was forced to cook outdoors. This was particularly challenging in the monsoons and when the sun was strong. She would have liked the kitchen to have been constructed outside the house to enable her to continue her habitual ways of cooking. Everslin from the Kottilpadu temporary shelter had the same complaint. She was afraid that the kitchen being built in the new house was very small and impractical for use of firewood as fuel. Such kitchens were suited to the use of gas stoves, which most people didn't



*Small non-ventilated kitchens in Kovalam are impossible to cook in*

have; neither were they accustomed to or comfortable cooking on gas stoves. In Kalaignarnagar too, women's principal complaint with the house was that they could not cook with firewood inside.

As mentioned under the section on *Habitability*, in Veerabagupathy, women were very unhappy with the fact that there was no separate kitchen nor any shelves or storage space. They needed a separate kitchen which though covered should be large and open on one side so that they could use firewood without any difficulty.

Apart from compromising cultural requirements, the lack of adequate cooking space and ventilation in kitchens results in indoor air pollution contributing to a sharp rise in acute respiratory disorders among women.

In Kovalam too, at the Discipleship Centre permanent housing site, there had been no people's participation in the design and plan of the house. The entire community was extremely unhappy that the entrance to the house was from the side rather than from the front as was the cultural requirement for homes of the fishing community. They had objected to the side entrance but had been told that this was the approved "Gujarati model." In Veerabagupathy, the exterior of the house had been designed to retain a natural red brick look but people were not pleased with the "unfinished look" and wanted plastering on the exterior walls.



*Culturally inappropriate side entrance to houses in Kovalam*

Most people we met in permanent housing sites were not comfortable with the toilet being inside the house as this was not culturally acceptable. Residents of Caritas/KSSS Nagar in Kottilpadu, expressed a strong preference for an external entrance to the bathroom rather than from inside the bedroom. In Rajakamangalam Thurai, people were unhappy with the fact that the toilet was attached to the kitchen. They would have liked the toilet to be completely separate. In some cases where community participation had been sought, housing designs had been modified to accommodate an external entrance to the toilet.

Seva Bharati had built double storied houses for some of the families living in the Akkaraipettai temporary shelter in Nagapattinam, but they had refused to move into the structures, as they were culturally opposed to living in multi-storey houses. The double storied house did not provide fishing families with space to dry fish, cook outdoors and store their fishing gear. Several women had protested the construction and though the organization had tried to hand them keys to the new houses, they had refused to accept them. In the initial phases of construction as well, community members expressed their discontent with the double storied housing model and explicitly



informed Seva Bharati that their cultural habits and livelihoods did not favour such a housing style. Despite this, Seva Bharati went ahead with the construction. Since people refused to occupy the houses, after building 260 houses of the planned 950 houses, Seva Bharati had stalled construction. At the time of our visit, the entire housing complex situated close to Salt Road in Nagapattinam was lying unoccupied: a clear case of wasted funds and inappropriate housing resulting from the absence of prior informed consent and consideration of community's needs.

*Abandoned Seva Bharati housing site*



In Pillamedu, while CREED, in association with CARE India, had consulted the community about the housing plan, people still had some reservations with what had finally been constructed. When asked how they would have built the house had they been given the money to do so, the responses from community members were almost identical. All the women said they would have built a bigger kitchen and included one or two more rooms in the house while the men said they would have

included a separate *pooja* (prayer) room. Both women and men said they were not comfortable sleeping and praying in the same room. A special space for prayer was very important for them and an integral part of their cultural and religious traditions. Apparently they had requested a *pooja* room to be built during the consultations with the NGOs but it had not been possible to include this extra space in the house design. Some men also expressed a preference for a larger living room (hall).

In the absence of adequate consultation, certain specific cultural needs of the fishing community have been compromised in the provision of permanent housing. The resultant discontent and inability to effectively continue with their traditional practices and norms reflects a serious violation of people's human rights to culture, freedom of expression, including religious expression, as well as non-discrimination and the human right to equality.



# The Human Right to Livelihood and Work

## International Legal Basis

Universal Declaration of Human Rights, Articles 17, 22, 23, 24;  
International Covenant on Economic, Social and Cultural Rights, Articles 6, 7, 8, 9;  
International Covenant on Civil and Political Rights, Articles 8, 22;  
Convention on the Elimination of All Forms of Discrimination against Women, Article 11;  
International Convention on the Elimination of All Forms of Racial Discrimination, Article 5;  
Convention on the Rights of the Child, Articles 26, 32;  
International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries, Article 24 (Part V).

Using the indivisibility of human rights framework, the human right to adequate housing is inextricably linked to the human right to livelihood and work, which is integral to human survival and the right to life with dignity.

The human right to adequate housing further necessitates an appropriate location to ensure undeterred access to livelihood and places of work. This must be an integral component of any relocation and resettlement in the post-tsunami context.

In the aftermath of the tsunami, many lost their livelihoods. While efforts are underway to restore people's livelihoods, especially for the fishing community as they were the worst affected in Tamil Nadu, most people have still not been able to entirely resume their former livelihoods or their original levels of earning. A multitude of factors ranging from ecological transformations such as increased siltation and salination in areas, changes in availability of fish, new equipment, altered fishing patterns, and relocation away from the coast, have affected the fishing community's livelihood.

Amongst the fishing community in Kovalam, it was only the men who engaged in both catching and selling fish. With the increased distance to the coast they were not able to fish as regularly as before. Two out of three of them were *coolies* (fish workers) and had not received any livelihood compensation after the tsunami. Only original boat owners had been given new boats. Income levels after the tsunami had also fallen. Some NGOs like Stella Maris visited periodically to teach women sewing, but the community had not received sewing machines from any organization.

Before the tsunami only about 20 people in Kottilpadu owned catamarans with engines. After the tsunami they had received fibre-reinforced catamarans; one boat had been given for two people. In order to run the engines, they had to buy petrol, which raised their operational costs. This had resulted in a fall in their total earnings.

People from Rajakamangalam Thurai said they had been left out during the distribution of boats. Since almost everyone in the neighbouring hamlet of Periyakadu had received boats and catamarans from Stella Maris, Rajakamangalam Thurai residents purchased some boats from them and also worked with them as labourers or shareholders. The women in the community worked mainly as fish vendors, but did not earn a steady income.

In Pillumedu, the fishermen said they went out fishing daily except during the monsoon. Most of them were backwater fishers. However after the tsunami, due to excessive siltation, fishing activities had been hindered. They had approached CARE India to undertake desiltation work in the area. Some of the fishermen also went out to fish at sea while others fished in the nearby river. They had received both fibre boats (for deep sea fishing) and catamarans (for backwater fishing). These had been provided on a shared basis: five people to one fibre boat and two to a catamaran. The Irulas of Kalaigarnagar also fish in backwaters. They had received seven fibre boats, 14 catamarans and 13 wooden boats from NGOs. This had enabled them to resume their fishing livelihood. Like the fishers in Pillumedu, they too complained of siltation after the tsunami, which was affecting their fish catch. The Irulas use their hands to catch fish in the backwaters while when fishing at sea they use nets.

Fisherfolk in Chennai and Nagapattinam complained of the poor quality boats given as compensation. Many boats had already broken. Allegedly, they were built in a very short span of time to meet the “emergency” but this had compromised the quality greatly. It also raised the question of corruption among contractors.

In Akkaraipettai, fishermen said that while they earned Rs. 200 – 300 a day before the tsunami, their earnings now averaged Rs. 150 – 200 a day.

Women’s special livelihood concerns continue to receive limited attention. As mentioned above, while sewing classes had been provided in some areas, women were not given sewing machines thereby rendering the training ineffective. In other places sewing machines had been provided, but no training on how to use them. A severe limitation on the part of most agencies involved in humanitarian and relief work is the restrictive thinking that equates alternate livelihoods for women only with sewing. There are several other more suitable livelihood options for women that could have been explored and promoted. For instance, the effects of relocation on women’s mobility, especially in terms of distance from, and impeded access to, fish markets,



*Space to sell fish and store fishing gear in Keezhamanakudy*

have not been adequately addressed. It is only a few NGOs like SNEHA in Nagapattinam and IWID in Kancheepuram that have provided women with vehicles to commute to markets to ensure continuation of their livelihood activities. Rural Uplift Centre with support from German Doctors for Developing Countries had constructed a fish marketing centre as well as a space for fishermen to store their gear along the coast in Keezhamanakudy.

Ranchitam, a single mother in Keezhamanakudy complained of the difficulty in earning a livelihood. She told us she worked as a daily wage labourer with a fish company in Melamanakudy. She went there to work during the season, else once or twice a month. She earned anything between Rs. 12 – 50 per day, and often had to spend the night there if it got too late. This was difficult as she worried about leaving her two adolescent daughters alone at home, though she also had a son who had recently commenced fishing.

One of the worst affected by post-tsunami relocation was the fishing community living in “semi-permanent shelters” in Ernavoor, located at a distance of 6-7 kilometres from the coast. The expense of commuting daily coupled with the lack of guarantee of work had forced many to seek alternate daily wage work, such as street cleaning and construction. Women complained of the increased burden incurred on them due to the loss of fishing livelihoods. With a sharp drop in family income levels, many women had also been forced to take up daily wage work to make ends meet. Some had set up petty shops while others had started sewing and ironing services. Women in particular seemed depressed and lamented that the men in the community had become idle since they could not fish regularly. This had increased insecurity and frustration in the community and was affecting inter-personal relationships greatly.



*Self-employed women in Ernavoor*

As stressed before, location is critical to the fulfilment of the human right to adequate housing as well as the human right to livelihood and work. The absence of community participation in selection of the final site for permanent housing jeopardises people's access to livelihood while bringing about financial and emotional insecurity and psycho-social ailments. This further affects other human rights, in particular the rights to food and health. It is therefore critical that rehabilitation is viewed as a holistic and long-term process that addresses multiple and inter-related needs and rights of communities simultaneously. The failure to understand these inter-linkages and the absence of an integrated approach to rehabilitation based on the indivisibility of human rights is largely responsible for the continued misery and suffering of tsunami survivors in Tamil Nadu and Pondicherry.

## Lessons Learnt

One of the main findings of our first fact-finding mission to the tsunami affected areas of Tamil Nadu in India and Sri Lanka in June-July 2005 was that affected people's right to participate in relief and rehabilitation planning and implementation was not being respected.<sup>39</sup> There were hardly any effective mechanisms available for affected people to participate in rehabilitation plans and related processes. People, especially women, were not provided with adequate and timely information. Confusion regarding relevant government policies and responsible agencies was rampant. We believe that a lot of the human rights violations that took place as a result of inadequate post-tsunami response could have been avoided had affected people (including women, persons with disabilities, older persons, and other marginalised communities) been provided the necessary information and been adequately involved in decision-making processes.

The aim of the present fact-finding mission to Tamil Nadu and Pondicherry was not merely to assess the progress of permanent housing from a human rights perspective but to also assess the level of people's participation in the planning and execution of permanent housing construction. This report therefore goes beyond highlighting the lacunae in permanent housing construction taken up by various civil society organizations and documents useful practices related to people's involvement and participation, with a view to ensuring that their human rights are respected, protected and fulfilled.

As brought out throughout the report, there are multiple ways in which the lack of information and effective participation has resulted in housing rights violations in the tsunami-affected areas of Tamil Nadu and Pondicherry. In some cases, as in parts of Akkaraipettai in Nagapattinam and Srinivasapuram in Chennai, the complete absence of people's involvement has resulted in a feeling of hopelessness and destitution in the affected community. In other instances, a total disregard for people's occupational requirements like lack of space to store fishing gear or to dry fish has resulted in scores of houses lying unoccupied as in the Seva Bharati constructed permanent housing site in Nagapattinam. In most cases, however, people have moved into the permanent houses provided despite their inadequacy and unsuitability due to sheer desperation and their inability to continue living in the extremely uninhabitable temporary structures. There are, however, few examples where NGOs have tried to provide affected people with

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<sup>39</sup> *Post-Tsunami Relief and Rehabilitation: A Violation of Human Rights*, Housing and Land Rights Network, New Delhi, September 2005. Available online at: [http://www.hic-sarp.org/news\\_show\\_user.php?id=42](http://www.hic-sarp.org/news_show_user.php?id=42)

information and ensure their involvement in decision-making at various levels. Their efforts have also been documented below. We hope that the report generally, and this section particularly, is useful to all those wishing to learn from past mistakes and move forward collectively in a constructive manner to ensure that permanent housing does not violate the human rights of the affected.

### **Human Rights Awareness**

One of the first steps towards facilitating effective people's participation is making them aware of their human rights, especially the right to information and participation as well as the right to relief and rehabilitation. It is only when people start regarding relief and rehabilitation as a human right that will they be able to effectively participate. Most disaster-affected people demoralized by the destruction and loss, tend to view all relief and rehabilitation as charity, and therefore are often not able to adequately represent themselves when in dialogue with an implementing agency. For instance, when we asked women in Periya Nemelli Kuppam as to why they did not express their requirement of a prayer room to World Vision when housing plans were being prepared, women said that they were not sure if it would be appropriate to make demands when World Vision was providing "us with so much." It is therefore imperative that both governments and NGOs engage in comprehensive human rights awareness programmes as a part of all disaster preparedness as well as post-disaster reconstruction initiatives.

### **Making Information and Participation Integral to all Post-disaster Policies and Programmes**

One of the most egregious lapses in post-disaster response is the complete absence of any human rights standards in government policies. The Government of Tamil Nadu, till date, does not have a comprehensive tsunami rehabilitation policy. As a result, both government and non-government agencies have had a more or less free reign with regard to methods of operation. In response to the 2004 tsunami, India passed a National Disaster Management Act, 2005.<sup>40</sup> Although the Act was passed a year after the tsunami and after several reports by civil society organizations that stressed the need for affected people's participation in post-disaster response, the Act is largely silent on information and participation. The Act concentrates on laying out functions of different agencies at the state and national level to deal with disasters, and the creation of new structures including a National Institute of Disaster Management. The Act is completely devoid of human rights language; neither does it provide a timeline for post-disaster relief and rehabilitation. While it makes vague references to standards for food and housing, these are not specified and thus quite meaningless.

Any law related to disaster management must make provisions for people's involvement in all disaster related work – from disaster preparedness to post-disaster response. Special provisions must be made to ensure that women and all other marginalised and vulnerable

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<sup>40</sup> National Disaster Management Act 2005, [http://www.nidm.net/DM\\_act2005.pdf](http://www.nidm.net/DM_act2005.pdf)



groups are included in all stages of decision-making, right from disaster preparedness to relief to long-term rehabilitation. Special concerns of marginalised groups must be factored into the law and it should be grounded on the principles of substantive equality and non-discrimination.

### **Mechanisms for Participation**

The character and composition of the participatory mechanism determines, to a great extent, the nature and extent of people's participation. The major mechanisms for people's involvement in post-tsunami rehabilitation have been caste panchayats, and in the Kanyakumari belt, parish councils. The use of community and kinship based groups rather than democratically elected bodies like village panchayats is of serious concern as these fora are often not representative of the entire community. Decisions taken at these platforms may, therefore, not reflect the requirements of some of the most marginalised sections of the community, including women and dalits, since most of these traditional organizations are dominated by upper caste men.

Many groups have used fisher people's panchayats for discussing housing plans and getting them approved in the context of permanent housing. While these panchayats have a strong hold on the community, being male-only panchayats, very often women's concerns and requirements do not get the necessary consideration. In Chidambaram, when we asked women if they would like to be a part of the fishing panchayat, their initial reaction was in the negative. Later some women said yes, but also acknowledged the fact that the men would not permit them to participate and even if allowed to join the panchayat, they were not sure they wanted to be part of a male dominated set-up.

In Pudu Kalpakkam in Kancheepuram district, while women were mostly happy with the houses constructed by Women's Collective, they complained that although the houses had toilets, they did not provide for bathing areas. Instead the site had one large public complex with bathrooms. While this was perfectly suited for the requirement of the male members of the community, women found the facility high unsuitable and would have preferred to have individual bathrooms. But we were told that since Women's Collective had mainly consulted the all-male caste panchayat before finalising the site plan, women's concerns of privacy and security had been ignored.

In the Kanyakumari region, NGOs have depended mainly on parish councils as mechanisms for participation. As most settlements in this area are 100% Catholic in their composition, the system of community organization is also along religious lines. Several families (30 in the case of Keezhamanakudy) form one Basic Christian Community also known as an *Anbiyam*. Representatives from each of the *Anbiyams* along with a few members from the Church form the parish council. The parish council in Keezhamanakudy consists of 32 individuals of which only three are women. To ensure effective and meaningful participation of all those affected, including the most vulnerable, parish councils may not be the best mechanism as more often than not they represent only elite

interests within a particular community. Like fisher people's panchayats, parish councils too can be highly patriarchal in their composition and therefore give limited space to women's concerns.

Since it is true that very often village panchayats are not very different from caste or religion-based community organisation structures in their composition, it is necessary to devise a mechanism through which all sections of society, including community leaders, elected representatives and representatives from marginalised groups can come together. We believe that it is only when a truly representative body is involved in decision-making that the concerns and human rights of all sections will be adequately represented and addressed.

### **NGO Initiatives**

Several NGOs working on permanent housing used participatory practices to try and ensure that concerns and requirements of all members were addressed within the existing financial and space constraints.

**Development Alternatives (DA)**, a Delhi-based NGO has a well-documented system of ensuring people's participation. Their *Sustainable Reconstruction Initiative* in tsunami affected villages of Karaikal Medu, Kilinjal Medu and Kottucherry Medu in Karaikal, Pondicherry, is being supported by the Swiss Red Cross.

The project has adopted a participatory approach to permanent housing and several workshops have been held with the community since April 2005 to understand the needs and priorities of women and men with regard to house design and settlement planning. Through these workshops, Village Reconstruction Committees (VRCs) were also created to enable community participation in the design of village and dwelling units. The workshops also informed villagers of sustainable building practices in order to facilitate their choice of technologies for reconstruction.

According to DA, at least 50% of the VRC members must be women. A VRC member must be recognized by the village as someone who is responsible and working in the interest of the village as a whole. Members must also be willing to spare time for taking on project responsibilities, including monitoring quality and pace of construction.

During one of the preliminary consultations a 1:1 scale model of the most preferred house design was set up with the help of casurina poles and saris. The community agreed on a covered area of 380 – 400 square feet. It was through the consultations that they were able to express their preference for houses to be built in the front or rear of the plot to enable future expansion.

Given space limitations, the residents of Karaikal Medu decided to have a niche with shutters in the living room that would serve as an altar for praying. Residents of Kilinjal Medu, however, insisted on a separate prayer room, which is why two different designs were adopted for the two communities.

Based on the community-approved design, which factored in their cultural preferences, fishing community traditions, and *vaastu* principles, DA worked with architects to develop the final housing plan and also conducted training programmes on sustainable technology options.<sup>41</sup>

It is also important to assess the nature of existing community structures through which an agency operates in a particular area in an attempt to be inclusive. The traditional fishing panchayat in Karaikal was responsible for all decision-making in the community. However, panchayat elections were held in Pondicherry in April-May 2005 after a long break. Interestingly, all those elected were originally members of the fishing panchayat. How this influences decision-making and power relationships in the community remains to be seen. One woman has also been elected to the panchayat. DA has also banked on the strong “mader sanghas” or women self help groups organized by SNEHA in the area.



*Model house at Karaikal Medu*

**Social Needs Education and Human Awareness (SNEHA)** a women’s organization based in Nagapattinam adopted a very comprehensive plan for ensuring community participation in their reconstruction work.

SNEHA’s policy has been to support low income and marginalised families to rebuild or repair their houses themselves *in situ* (i.e. on their original living sites). In all, SNEHA helped with the reconstruction of 6451 houses in Nagapattinam and Karaikal. SNEHA first spoke to people and selected a monitoring committee, which consisted of a minimum of 12 members of whom at least six or seven had to be women, two had to be from the traditional panchayat, and two from the *SNEHA Sangam* (a women’s group formed in every village where SNEHA has been working).

SNEHA members who have been working in the village for a long time and know the people well, helped to select the beneficiary families. Engineers then assessed the extent of damage to the houses and helped prepare estimated costs of repair and reconstruction. In the hamlet of Keechamkuppam, SNEHA helped families to rebuild completely destroyed houses while in Akkaraipettai they assisted families to repair their damaged homes.

SNEHA opened a bank account in the name of the woman of the household as the beneficiary. The money for reconstruction was deposited in three instalments based on

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<sup>41</sup> For more information, see: *Sustainable Reconstruction in Tsunami Affected Villages, Karaikal, Pondicherry*. Stakeholder Workshop reports, Development Alternatives, March, April, June, August 2005.

progress reports. It was only when one phase of construction was completed that the next instalment was disbursed. Photographs were also taken at various stages of construction to ensure that the money was being appropriately spent. The maximum amount given by SNEHA for reconstruction of a new house was Rs. 50,000, while for repair the amount ranged from Rs. 5,000 – 30,000. SNEHA also provided training to the monitoring committee as well as to people in the community on how to build, the type of material to be used, and the ideal ratio of cement to sand.

SNEHA was probably the only group in the post-tsunami reconstruction context that allowed communities to build their own houses by giving women the required money. This also helped to dismantle some of the patriarchal practices within fishing communities. When asked if there was resistance from the men to women being made principal beneficiaries, we were told that it was rare and even where it existed, subsided once they received the money.

Built by individual families, each house that SNEHA helped to reconstruct was unique in layout and external appearance. The women we spoke to seemed to be happy with what they had built. While this serves as a good example of a participatory process, there are some questions regarding the adequacy of housing constructed. Though communities rebuilt their own houses based on their cultural preferences, personal needs and traditional styles, most of these houses do not meet the requirements for disaster-resistance,



*One of the houses supported by SNEHA in Keechamkuppam*

and neither do they meet housing rights standards of ideal sanitation, ventilation, and space. It is highly probable that the houses would not withstand a future disaster. Unlike houses constructed by other NGOs, SNEHA supported houses have not been built using disaster resistant technologies. Most of the houses have neither toilets nor bathing facilities. While an NGO called HOPE had agreed to build toilets for the community, most women said they preferred not to have attached toilets for fear that the odour would permeate the entire house. While people's desires must be respected, it is for NGOs who have a good rapport with the community to make them aware of health and sanitary benefits, and also to explain and incorporate modern technologies with a view to doing away with misconceptions.

Participation, respect for cultural practices and independent decision-making need to be balanced with technological advancements to ensure the provision of a house that is not just culturally appropriate but also durable and habitable. The key to ensuring that housing is truly adequate is to guarantee not just participation but "informed participation" which



involves a very thorough consultative process with the community, especially with the women.

Several other NGO representatives we met and the communities they worked with, spoke of the varied ways in which people's participation had been facilitated. **Praxis** was building permanent houses in Rajakamangalam Thurai for those who had been excluded by the government policy of 'one house for one house.' The local parish council had drawn up the list of those for whom permanent houses were going to be built. Praxis initially did a family analysis and asked people to draw a layout for their houses. These drawings were then incorporated in keeping with financial and space constraints and 2-3 architectural plans were prepared from which people could choose the design they desired. Praxis was using rat-trap bond and roof-filler slab technology in order to make the houses disaster resistant.



*Disaster-resistant houses being built by Praxis in Rajakamangalam Thurai*

**CREED** in Chidambaram district had formed Village Development Committees (VDC) in each of the villages where they were involved in permanent housing construction. Each VDC consisted of ten members from the village of which at least three had to be women. The community was shown 10 models of houses and they had selected one. After they had finalised the model, women requested a staircase leading to a terrace



*Houses built by CREED and CARE India in Pillamedu provide space for families to make additions and modifications*

and a portico in front of the house. Men asked for a common septic tank for the entire community. The design was then modified to incorporate their suggestions as far as possible. **Rural Uplift Centre** had also adopted a participatory process in finalising the design of permanent housing in Keezhamanakudy in Kanyakumari district.

Participatory models of rehabilitation, such as those described above, help ensure that concerns of marginalised groups, including women, are incorporated into housing reconstruction plans thereby resulting in a greater level of community satisfaction.



## Recommendations

This report has examined the permanent housing situation in the aftermath of the tsunami from a human rights perspective using information and participation as the main tools for assessment. There is no doubt that the provision of adequate and timely information to all and the active participation of everyone, including women and other marginalised groups within affected communities, at every stage of relief and rehabilitation is key to ensuring that the human rights of all affected persons are respected, protected and fulfilled.

The aim of this report is not only to highlight some of the lacunae in both planning and implementation during this stage of rehabilitation, but more importantly to document some of the innovative practices adopted by various NGOs in helping affected people realise their human right to adequate housing and to highlight some of the lessons learnt. The following recommendations have therefore been made with a view to learning from past mistakes and to ensuring that useful and human rights based methods of operation are not forgotten and moreover adopted as an inherent component of rehabilitation processes.

### **General recommendations to all government and non-government actors, including international humanitarian organizations, donors, and multilateral banks:**

The HLRN team appreciates the intentions of most of the actors involved in relief and rehabilitation, and commends the efforts of some. Nevertheless, despite an apparent display of goodwill, on the whole, there still remains much to be ameliorated. Below is a general list of recommendations to all actors involved in post-tsunami rehabilitation:

1. Relief and rehabilitation must be recognised and upheld as an inalienable human right of all affected people.
2. A human rights-based approach must underlie all resettlement and rehabilitation work and the principles of non-discrimination, equality, and indivisibility of human rights must be upheld.
3. All relief and rehabilitation plans must meet national and international human rights standards, in particular the rights to life, livelihood, health, food, water, information

and participation, dignity, equality, freedom of association and movement, and adequate housing.

4. Based on these standards, every person irrespective of race, class, caste, linguistic group, ethnicity, sex, sexual orientation, marital status, disability and age, at every resettlement site/permanent housing colony for tsunami survivors must have:
  - Adequate housing;
  - Adequate food and resources to access food;
  - Adequate healthcare facilities, including psychological counselling;
  - Access to education;
  - Access to livelihood options;
  - Opportunity for participation and representation;
  - Protection against violence, especially for women, children, the elderly, persons living with illness and HIV/AIDS, and persons with disabilities;
  - Access to just compensation;
  - Mechanisms for grievance redressal;
  - Access to judicial remedy;
  - The right to return, where desired and feasible;
  - All other rights normally available to citizens of the country.
5. Access to relief and rehabilitation should not be contingent upon gender, caste, class, age, proof of residence, marital status, and location of the original house. The principles of non-discrimination and substantive equality must underlie all rehabilitation work.
6. All relief and rehabilitation programmes must be based on a comprehensive assessment of needs, factoring in the special needs of marginalised groups, including women, children, persons with disabilities, and other minorities.
7. Rehabilitation must be culturally sensitive and well suited to meet local conditions. All relief and rehabilitation processes must be gender-sensitive and should not perpetuate discrimination of any form.
8. Equal attention must be paid to rebuilding people's lives and livelihoods and to addressing the environmental, psychological and social dimensions of the tsunami, in addition to rebuilding physical infrastructure.
9. Rehabilitation must look into the long-term needs of individuals and communities, especially of children who suffer the worst psychological impacts of any disaster.
10. The central and state government needs to play a more active role in designing and monitoring rehabilitation efforts.
11. The Disaster Management Act of 2005 must be implemented in totality as a matter of urgency.

### **Recommendations on Information and Participation**

As mentioned in the report, there is ample evidence to highlight that one of the main reasons for the failures and lapses, including human rights violations in the post-tsunami rehabilitation context, has been the little or no effort on the part of government and

non-government agencies to involve local communities. Unfortunately, existing laws, policies and programmes and the numerous Government Orders issued soon after the tsunami have failed to take due cognizance of this fact. The recommendations given below, if accepted and implemented, could help in mitigating the negative impacts of these failures and making sure they are not repeated.

1. Survivors must not be viewed merely as victims but as people responsible for their future and must be involved in all plans and processes related to rehabilitation.
2. All actors – whether government or non-government – involved at various stages of the rehabilitation process, especially the implementing agencies, must provide affected people with complete and timely information on:
  - Relief and reconstruction plans and processes;
  - Housing designs and resettlement site plans, including information on size, material, technology to be used, and location;
  - Funds received and amount disbursed;
  - Responsible authorities/agencies, and mechanisms available for participation, complaint, and grievance redressal.
3. Information must be made available in local languages and through appropriate media with a view of reaching the maximum number of people in every community:
  - Special steps must be taken to ensure that all information reaches marginalised sections, including women, children, minorities, older persons, historically discriminated groups, and persons with disabilities;
  - Special measures must be taken to ensure that all information is accessible even to semi-literate and non-literate people.
4. Affected people's human right to participate in relief and rehabilitation planning and implementation must be respected and promoted:
  - Mechanisms must be established to allow for participation of the affected communities at every stage of the rehabilitation process;
  - These mechanisms must provide adequate space for representation from marginalised and vulnerable groups including women, children, dalits and other minority and historically discriminated communities, older persons, and persons with disabilities.
5. Rehabilitation plans must be discussed with the community using innovative ways in order to reach the most vulnerable and marginalised, including persons with disabilities and those who are semi-literate and non-literate.
  - There should be adequate time given to affected people to provide suggestions regarding housing and other rehabilitation plans;
  - Implementing agencies must try and accommodate people's suggestions regarding housing and other rehabilitation plans;
  - Special efforts must be made to solicit the opinion of marginalised groups including women, older persons, and persons with disabilities;

- Any budget or space related constraints must be explained to all people in the community;
  - Where applicable, explanations for the inability to adopt certain suggestions from the community must be provided to the community in a manner and language that is accessible to all;
  - The rationale for using certain newer technologies must also be explained to the community;
  - People must be given full information on the implications of choosing a certain design or plan over another;
  - Housing plans must be implemented only with the prior informed consent of the affected community;
  - Communities must be given full information on their tenurial rights with regard to the house as well as the house plot.
6. All legislation, plans and policies concerning post-disaster response must have a strong information and participation component based on human rights principles. Existing laws, policies, and plans that do not have strong provisions for information and participation must be amended accordingly.
  7. Relief and rehabilitation requires assessment as well as monitoring and must involve local governing bodies.
    - Joint task forces comprising of affected people and members of the implementing agency should be set up for the purpose. All monitoring mechanisms must have adequate representation of women, persons with disabilities, older persons, dalits, and members of marginalised and vulnerable groups;
    - The government must monitor rehabilitation work of all concerned agencies in order to ensure that there is active people's participation, including that of women, children, the elderly and persons with disabilities, dalits, and members of marginalised and vulnerable groups.
  8. Where rehabilitation involves relocation, it must be done only with the prior informed consent of the people concerned.
  9. All implementing agencies must be committed to work in a spirit of transparency and accountability to the community. The government should develop mechanisms to ensure NGO accountability as well.

## **Recommendations on Permanent Housing**

While we believe that application of the human rights framework can address the variety of issues and complaints that have come to our notice, the following recommendations are targeted towards redressing some of the major shortcomings with regard to permanent housing.

1. There is an urgent need for the Central Government to issue a comprehensive enforceable post-disaster rehabilitation policy grounded in human rights principles:
  - Specifically, the rehabilitation policy must meet international housing rights standards and provide for security of tenure; affordability; accessibility; habitability;

access to public goods and services; access to natural resources, including land; adequate location; cultural adequacy; participation; and physical security and privacy, including freedom from violence;<sup>42</sup>

- Special steps must be taken to ensure that the concerns of vulnerable and marginalised groups including women, children, the elderly, persons with disabilities, minorities, dalits and other historically discriminated groups, are addressed through mechanisms built into the rehabilitation policy.
2. All those who lost their houses in the tsunami or are living in severely damaged and therefore inadequate housing must be provided with alternate permanent housing.
  3. The current Tamil Nadu government policy of replacing one house with one standard house should be revised to take into account family size and the number of family units, including those living as tenants, in a single large house. Any permanent housing policy must ensure that no family or person is denied the human right to adequate housing.
  4. All plans regarding permanent housing and the resettlement site must be adequately discussed with the community before being finalized.
    - Communities must have a say in the choice of permanent housing, including the final design, material, layout, and location of the housing site;
    - Periodic consultations must be held with adequate representation of all sections of the community;<sup>43</sup>
    - Permanent housing plans cannot be finalized without the prior informed consent of the affected people.
  5. The government must take the responsibility for ensuring that adequate land is made available in a timely manner for permanent housing to all disaster-affected people.
  6. In order to protect women from arbitrary eviction and to uphold their equal rights to land and housing, the government and involved NGOs must ensure that titles to the permanent house are given in the name of both the man and the woman of the house, and in the names of women where required.
  7. The government must develop and disseminate comprehensive guidelines for permanent housing construction. These should be based on human rights standards and must stipulate the use of disaster resistant technology for all housing construction. Mechanisms should be established to ensure adherence to these guidelines by all agencies involved in constructing and providing permanent housing.
  8. Governments, in consultation with civil society organizations and local communities, must frame an enforceable timeline for completion of rehabilitation work, including permanent housing. This must include specificities regarding the maximum permissible duration of stay in emergency and temporary shelters. Permanent housing must be

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<sup>42</sup> This should be based on General Comment 4, 'The right to adequate housing,' of the Committee on Economic, Social and Cultural Rights. See Section on *Human Right to Adequate Housing* of this report for more information.

<sup>43</sup> As mentioned in the chapter on *Lessons Learnt*, some NGOs have adopted participatory practices, which could be adapted.



provided at the earliest without compromising the element of community participation and consultation.

9. Recognising that implementing agencies have to work within the policy guidelines provided by the government concerned, in case of a conflict between policy guidelines provided by the government and human rights standards, the latter must take precedence in all matters.
10. The government should set up special oversight mechanisms to ensure timely implementation and monitoring of relief and rehabilitation work based on human rights standards.
11. All implementing agencies must have effective mechanisms for regular follow-up, complaint registration, and grievance redressal, even after people have shifted into their permanent houses.
12. All agencies must operate on the principle of cooperation and transparency and be accountable to the constituencies they claim to be working for.

## International Legal Provisions Guaranteeing the Human Right to Adequate Housing and Land<sup>1</sup>

### A. Binding Instruments

#### **Article 25(1), Universal Declaration of Human Rights, 1948**

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

#### **Article 11 (1), International Covenant on Economic, Social and Cultural Rights, 1966**

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

#### **Article 5, International Convention on the Elimination of All Forms of Racial Discrimination, 1965**

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(e) Economic, social and cultural rights, in particular:

(iii) The right to housing;

#### **Article 14, Convention on the Elimination of All Forms of Discrimination against Women, 1979**

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

#### **Article 16, Convention on the Elimination of All Forms of Discrimination against Women, 1979**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

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<sup>1</sup> See *International Human Rights Standards on Post-disaster Resettlement and Rehabilitation*, Housing and Land Rights Network and PDHRE – People’s Movement for Human Rights Learning, January 2006. Compilation available online at: <http://www.hic-sarp.org/Post-Disaster%20Compilation.pdf>

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

**Article 27(3) Convention on the Rights of the Child, 1989**

States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

**Article 16(1), Convention on the Rights of the Child, 1989**

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

**Article 9, International Labour Organization Social Policy (Non-Metropolitan Territories) Convention, 1947**

1. Measures shall be taken to secure for independent producers and wage earners conditions which will give them scope to improve living standards by their own efforts and will ensure the maintenance of minimum standards of living as ascertained by means of official enquiries into living conditions, conducted after consultation with the representative organisations of employers and workers.
2. In ascertaining the minimum standards of living, account shall be taken of such essential family needs of the workers as food and its nutritive value, housing, clothing, medical care and education.

**B. Guidelines/Principles/Declarations/Resolutions**

**General Comment No. 4, 'The Right to Adequate Housing', Committee on Economic Social and Cultural Rights, 1991**

**General Comment No. 7, 'The Right to Adequate Housing: Forced Evictions', Committee on Economic Social and Cultural Rights, 1997**

**General Comment No. 5, 'Persons with Disabilities,' Committee on Economic Social and Cultural Rights, 1994.**

**General Comment No. 6, 'The economic, social and cultural rights of older persons,' Committee on Economic Social and Cultural Rights, 1995**

**General Recommendation No XIX: Article 3 of the Convention, Committee on the Elimination of All Forms of Racial Discrimination, 1995**

**United Nations General Assembly resolution 43/181, United Nations Global Strategy for Shelter to the Year 2000, 1998.**

**Housing and property restitution in the context of refugees and other displaced persons, Sub-Commission on Human Rights resolution 2002/7**

**Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, 2005, Commission on Human Rights resolution 2005/25**

**Declaration on Social Progress and Development, 1969 General Assembly resolution**

**2542 (XXIV)**

10 (f) The provision for all, particularly persons in low-income groups and large families, of adequate housing and community services.

18 (d) The adoption of measures to introduce, with the participation of the Government, low cost housing programmes in both rural and urban areas;

**Article 8, Declaration on the Right to Development, 1986, General Assembly resolution 41/128**

1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

**Principle 1, United Nations Principles for Older Persons, 1991, General Assembly resolution 46/91**

Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.

**Article 21, Convention relating to the Status of Refugees, 1951**

As regards housing, the Contracting States, insofar as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

**Vancouver Declaration on Human Settlements, United Nations Conference on Human Settlements (Habitat I), 1976.**

Section III (8): Adequate shelter and services are a basic human right which places an obligation on Governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action. Governments should endeavour to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, inter alia, through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities.

Part II 1. The improvement of the quality of life of human beings is the first and most important objective of every human settlement policy. These policies must facilitate the rapid and continuous improvement in the quality of life of all people, beginning with the satisfaction of the basic needs of food, shelter, clean water, employment, health, education, training, social security without any discrimination as to race, colour, sex, language, religion, ideology, national or social origin or other cause, in a frame of freedom, dignity and social justice.

**The Istanbul Declaration and the Habitat Agenda, Second United Nations Conference on Human Settlements (Habitat II), 1996**

**B. Adequate Shelter for All**

**1. Introduction**

61. Since the adoption of the Universal Declaration of Human Rights in 1948, the right to adequate housing has been recognized as an important component of the right to an adequate standard of living. All Governments without exception have a responsibility in the shelter sector, as exemplified by their creation of ministries of housing or agencies, by their allocation of funds for the housing sector and by their policies, programmes and projects. The provision of adequate housing for everyone requires action not only by Governments, but by all sectors of society, including the private sector, nongovernmental organizations, communities and local authorities, as well as by partner

organizations and entities of the international community. Within the overall context of an enabling approach, Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing. These actions include, but are not limited to:

- (a) Providing, in the matter of housing, that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;
- (b) Providing legal security of tenure and equal access to land for all, including women and those living in poverty, as well as effective protection from forced evictions that are contrary to the law, taking human rights into consideration and bearing in mind that homeless people should not be penalized for their status;
- (c) Adopting policies aimed at making housing habitable, affordable and accessible, including for those who are unable to secure adequate housing through their own means.

**Article 10, Plan of Implementation, United Nations World Summit on Sustainable Development, 2002**

- (a) Improve access to land and property, to adequate shelter and to basic services for the urban and rural poor, with special attention to female heads of household;
- (b) Use low-cost and sustainable materials and appropriate technologies for the construction of adequate and secure housing for the poor, with financial and technological assistance to developing countries, taking into account their culture, climate, specific social conditions and vulnerability to natural disasters;
- (c) Support local authorities in elaborating slum upgrading programmes within the framework of urban development plans and facilitate access, particularly for the poor, to information on housing legislation.

**Principle 18, Guiding Principles on Internal Displacement, 1998, Commission on Human Rights**

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (b) Basic shelter and housing;

**Guideline 18, UN Comprehensive Human Rights Guidelines on Development-Based Displacement, 1997, adopted by the Expert Seminar on the Practice of Forced Evictions, Geneva**

All persons have the right to adequate housing which includes, inter alia, the integrity of the home and access to and protection of common property resources. The home and its occupants shall be protected against any acts of violence, threats of violence or other forms of harassment, in particular as they relate to women and children. The home and its occupants shall further be protected against any arbitrary or unlawful interference with privacy or respect of the home.

**International Labour Organization Recommendation No. 115 concerning Worker's Housing, 1961**

Section II (Objectives of National Housing Policy), paragraph 2: It should be an objective of national [housing] policy to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent.



Section VI (Housing Standards), paragraph 19: As a general principle, the competent authority should, in order to ensure structural safety and reasonable levels of decency hygiene and comfort, establish minimum housing standards in the light of local conditions and take appropriate measures to enforce these standards.

**Article 43.1, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to...

(d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents.

**Draft Declaration on Human Rights and the Environment, 1994**

10. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment.

11. All persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole and not attainable by other means. All persons have the right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequate restitution, compensation and/or appropriate and sufficient accommodation or land.

**Basic Principles and Guidelines on Development-based Evictions and Displacement, 2006**

56. In determining the compatibility of resettlement with the present guidelines, States should ensure that in the context of any case of resettlement the following criteria are adhered to:

(b) Resettlement must ensure that the human rights of women, children, indigenous peoples and other vulnerable groups are equally protected, including their right to property ownership and access to resources;

(d) No affected persons, groups or communities, shall suffer detriment as far as their human rights are concerned nor shall their right to the continuous improvement of living conditions be subject to infringement...

(e) Affected persons, groups and communities' right to full and prior informed consent regarding relocation must be guaranteed. The State shall provide all necessary amenities, services and economic opportunities at the proposed site;

(f) The time and financial cost required for travel to and from the place of work or to access essential services should not place excessive demands upon the budgets of low-income households;

(g) Relocation sites must not be situated on polluted land or in immediate proximity to pollution sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants;

(h) Sufficient information shall be provided to the affected persons, groups and communities on all State projects and planning and implementation processes relating to the concerned resettlement, including information on the purported use of the eviction dwelling or site and its proposed beneficiaries. Particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women and children are represented and included in this process;

(i) The entire resettlement process should be carried out in full consultation and participation with the affected persons, groups and communities. States should, in particular, take into account all alternate plans proposed by the affected persons, groups and communities;

**Voluntary Guidelines for the Progressive Implementation of the Right to Food, World Food Summit 2002 (adopted in 2004)**

2.5 States should pursue inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land use, and, as appropriate, land reform policies - all of which will permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labour, capital and management, and encourage conservation and sustainable management of natural resources including in marginal areas.

8.10 States should take measures to promote and protect the security of land tenure, especially with respect to women, poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities.

*Also see:*

**General Comment No. 14, 'The right to the highest attainable standard of health,' Committee on Economic, Social and Cultural Rights, 2000.**

**General Comment No. 15, 'The right to water,' Committee on Economic, Social and Cultural Rights, 2002.**

**General Comment No. 16, 'The equal right of all men and women to the enjoyment of all economic, social and cultural rights,' Committee on Economic, Social and Cultural Rights, 2005.**

**General Comment No. 18, 'The right to work,' Committee on Economic, Social and Cultural Rights, 2005.**

**Agenda 21, Chapter 7 - Promoting Sustainable Human Settlement Development – adopted at the United Nations Conference on Environment and Development, 1992.**

## **International Legal Provisions Guaranteeing the Human Rights to Participation and Information**

### **Human Right to Participation**

#### **A. Binding Instruments**

##### **Article 21, Universal Declaration of Human Rights, 1948**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

##### **Article 25, International Covenant on Civil and Political Rights, 1966**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

##### **Article 7, Convention on the Elimination of All Forms of Discrimination against Women, 1979**

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

#### **B. Guidelines/Principles/Declarations**

##### **Article 6, Article 7.3, International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1991**

**General Recommendation No. 23: Political and public life, Committee on the Elimination of Discrimination against Women, 1997**

**General Comment No. 25: Article 25 (Participation in public affairs and the right to vote), Human Rights Committee, 1996**

**Strengthening of popular participation, equity, social justice and non-discrimination as essential foundations of democracy, 2005, Commission on Human Rights resolution 2005/29**

**Article 2, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, General Assembly resolution 47/135**

**Article 8, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998, General Assembly resolution 53/144**

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

**Article 8, Declaration on the Right to Development, 1986 General Assembly resolution 41/128**

1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.
2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

**Articles 7, 14, United Nations Principles for Older Persons, 1991, General Assembly resolution 46/91**

**Vancouver Declaration on Human Settlements, United Nations Conference on Human Settlements (Habitat I), 1976**

Section II 13. All persons have the right and the duty to participate, individually and collectively in the elaboration and implementation of policies and programmes of their human settlements.

**Principle 18, Guiding Principles on Internal Displacement, 1998, Commission on Human Rights. Plan of Implementation, United Nations World Summit on Sustainable Development, 2002**

**Para. 43, Vienna Declaration and Programme of Action, 1993, World Conference on Human Rights**

**Article 18, Draft Declaration on Human Rights and the Environment, 1994**

**Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), 1998.**

**United Nations Economic and Social Council, Commission on the Status of Women, Forty-ninth session, 2005, resolution 49/5: Integrating a gender perspective in post-disaster relief, recovery,**

**rehabilitation and reconstruction efforts, particularly in the aftermath of the Indian Ocean tsunami disaster**

### **C. Policies**

**Recovery Framework in Support of Government of India for a Post-Tsunami Rehabilitation and Reconstruction Programme, United Nations Country Team India, March 2005**

**CRZ Notification and Post-Tsunami Rehabilitation in Tamil Nadu, United Nations Recovery Team India, March, 2005**

**Evolving Strategies for Long-term Rehabilitation on Shelter and Habitat Development in the Tsunami affected areas of Tamil Nadu, United Nations Development Programme, March 2005**

## **Human Right to Information**

**Article 19, International Covenant on Civil and Political Rights, 1966**

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

**Article 6, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998, General Assembly resolution 53/144**

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

**Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, 2005, Commission on Human Rights resolution 2005/35**

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

- (c) Access to relevant information concerning violations and reparation mechanisms.

12. States should:

- (a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;

**Strengthening of popular participation, equity, social justice and nondiscrimination as essential foundations of democracy, 2005, Commission on Human Rights resolution 2005/29**

**Plan of Implementation, United Nations World Summit on Sustainable Development, 2002**

- 35. (h) Develop and strengthen early warning systems and information networks in disaster management, consistent with the International Strategy for Disaster Reduction;



- (i) Develop and strengthen capacity at all levels to collect and disseminate scientific and technical information, including the improvement of early warning systems for predicting extreme weather events...

#### **Rio Declaration, United Nations Conference on Environment and Development, 1992**

*Principle 10:* Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

*Principle 18:* States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

*Principle 19:* States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

#### **Draft Declaration on Human Rights and the Environment, 1994**

15. All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions and courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.

#### **Programme of Action, World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001**

##### **2. Policies and practices**

##### **Data collection and disaggregation research and study**

92. Urges States to collect, compile, analyse, disseminate and publish reliable statistical data at the national and local levels and undertake all other related measures which are necessary to assess regularly the situation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance;

- (a) Such statistical data should be disaggregated in accordance with national legislation.
- (b) Any such information shall, as appropriate, be collected with the explicit consent of the victims, based on their self-identification and in accordance with provisions on human rights and fundamental freedoms, such as data protection regulations and privacy guarantees. This information must not be misused;
- (c) The statistical data and information should be collected with the objective of monitoring the situation of marginalized groups, and the development and evaluation of legislation, policies, practices and other measures aimed at preventing and combating racism, racial discrimination, xenophobia and related intolerance, as well as for the purpose of determining whether any measures have an unintentional disparate impact on victims.
- (d) To that end, it recommends the development of voluntary, consensual and participatory strategies in the process of collecting, designing and using information;

- (e) The information should take into account economic and social indicators, including, where appropriate, health and health status, infant and maternal mortality, life, information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

**Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), 1998**

Article 3 (1). Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.

**Gender, Disaster and Conflict: A Human Settlements Perspective, Gender – DMP/UN Habitat Concept Brief, 2004**

Access to information in prevention and mitigation stages of disaster management is critical. Women are particularly effective purveyors of information, though in many cases they are excluded from information processes. It is equally important however that women are involved in and aware of channels by which they can pass information regarding their needs and priorities. As such, information mechanisms must be two way and accessible for equal inclusion of women's and men's voices.

## **Tamil Nadu Government Order related to Housing**

**Government of Tamil Nadu Revenue (NC III) Department**

**G.O. Ms. No. 172**

Dated: 30-3-2005

Read:

1. G.O. Ms.No.25, Revenue (NC.III) Dept., dated 13.1.2005.
2. G.O. Ms. No. 26, Revenue (NC.III) Dept., dated 13.1.2005.

### **ORDER**

1. The Tsunami that struck the Tamil Nadu Coast on 26.12.2004 affected the entire coastal economy of the State in 13 districts destroying thousands of houses and resulted in enormous loss of lives and property.
2. The Government has ensured that every affected section of the population viz., agriculturists, small business owners, destitutes, widows, orphaned children, school and college students has been given necessary assistance. Government have also ensured that the essential needs of livelihood have been extended to all the affected families.
3. The Government of Tamil Nadu in the Government orders read above have set out guidelines for the participation of NGOs, Public Sector Undertakings, Corporate Houses and Rehabilitation organisations in this massive reconstruction venture and many agencies have responded positively. The State Relief Commissioner has also communicated a model MOU to be entered into with these organisational and designs and specifications of permanent houses developed by experts to the Collectors.
4. While the prime objective of the Government is to provide properly built houses in safe location to the affected families, Government also recognises that the fishermen people have to remain close to the sea for their livelihood. After taking note of the various regulations under the Coastal Regulation Zone Notifications issued by the Government of India, the Government of Tamil Nadu have formulated the following policy for the implementation of a massive housing reconstruction programme for the tsunami-affected families.
5. The Tsunami Housing Reconstruction Programme envisages the construction of about 1,30,000 concrete houses at an approximate cost of Rs. 1,50,000/- each. Each house will have 300-325 square feet (sq. ft.) of built-up space. The houses will be having all disaster-resistant features. The lay out will have adequate infrastructure facilities like water supply, streetlights, roads, rainwater harvesting structures, drains, community centre, Noon-meal centre etc. In Chennai and Thiruvallur multi-storied tenements would be built by Tamil Nadu Slum Clearance Board. Each tenement will have 235-250 sq. ft. area and will be built at an approximate cost of

Rs.1,50,000/- each. Adequate infrastructure would be provided in these settlements by the Tamil Nadu Slum Clearance Board at additional cost wherever necessary. The entire programme is likely to cost Rs. 1950 crores. It is expected that Government of India and the World Bank will provide substantial assistance for this programme.

6. Guidelines for the Programme:

While constructing new houses, the following guidelines shall be kept in view:

- a) Houses located within 200 metres of the High Tide Line
  - (i) As per the Coastal Regulation Zone notifications, only repair of structures authorized prior to 1991 is permissible and no new construction is possible. Therefore, all the house owners of fully damaged and partly damaged Kutchha and pucca houses within 200 mts. of the High Tide Line, will be given the choice to go beyond 200 mts. and get a newly constructed house worth Rs.1.50 lakh free of cost.
  - (ii) Those who do not choose to do so will be permitted to undertake the repairs on their own in the existing locations, but they will not be eligible for any assistance from the Government.
  - (iii) Even for houses, which are not damaged, the owners would be given the option of getting a new house beyond 200 mts. If they are not willing, they will be allowed to continue in the existing locations.
- b) Houses located between 200 metres and 500 metres of the High Tide Line
  - (i) For the fully/partly damaged Kutchha and fully damaged pucca houses in the area between 200 to 500 mts. of the High Tide Line, new houses would be constructed beyond 500 mts. of the High Tide Line based on the willingness of the house-owners.
  - (ii) If they are not willing to move beyond 500 mts. of the High Tide Line, the houses for them will be constructed in the existing locations.
  - (iii) For the repair of partly damaged pucca houses, financial assistance will be provided on the following scale based on the assessment of the damage by a technical team nominated by the District Collector consisting of Civil Engineers/Diploma holders from at least two Government departments and a private Civil Engineering Consultant.

**Extent of Damage Grant of Assistance**

If the value of the damage is up to Rs. 20,000: full grant of amount up to Rs. 20,000.

If the value of the damage is between Rs. 20,001 to Rs. 50, 000: Rs. 20,000 + 75% of the damage above Rs. 20,000/-.

If the value of the damage is above Rs. 50,000: A minimum assistance of Rs. 42,500/- + 50% of the damage above Rs. 50,000 subject to a maximum of Rs. 75,000.

- c) Houses located beyond 500 metres of the High Tide Line
  - (i) The procedure followed in respect of houses located between 200 to 500 mts of the High Tide Line will be applicable in the case of kutchha houses fully or partly damaged and pucca houses fully damaged located beyond 500 mts. of the High Tide Line.
  - (ii) For repair of partly damaged pucca houses in this area, financial assistance will be provided on the same basis as indicated in b(iii) above.

d) Other General Guidelines

1. The land for the houses will be given free of cost by the Government at the rate of 3 cents in rural areas and one and a half cents in municipal areas.
2. Priority will be given for non-governmental organisations, Public Sector Undertakings, Corporate Houses and Rehabilitation organisations to reconstruct and repair houses with their own money.
3. Where NGOs/other organisations do not come forward to construct new houses or repair existing houses the house owners will be permitted to construct/repair the houses themselves with financial assistance from the Government, subject to the financial ceilings and the technical specifications given by Government. District Collectors will render all the necessary assistance to the house owners/NGOs/ etc., to facilitate speedy construction.
4. Wherever the beneficiaries are unable to construct the house themselves with financial assistance from the Government and the NGOs are also not forthcoming, the Government will build the houses.
5. In all cases where new houses are given, the old site and the old house will have to be relinquished to the Government by a legally acceptable document. The District Collectors will ensure that these documents are properly registered and brought to Government account.
6. The areas so vacated because of new construction will be entered in the Prohibitory Order book and maintained for public purposes. Fisher people will be permitted to keep boats, nets etc. in these areas. Separate sheds, locker rooms etc. may be put up in these locations by Government/NGOs on a temporary basis as per CRZ guidelines.
7. The new houses should conform to the specifications developed by technical experts already communicated to the District Collectors from the State Relief Commissioner's office.
8. All the new houses will be insured for 10 years at the cost of the executing agency. The cost will be included as part of the Project cost.
9. The title of the house will be given in the joint names of the wife and husband if one of them is not alive, in the name of the survivor and the eldest child. The houses cannot be alienated/mortgaged/sold for ten years. Any transfer of the share of the wife's property to the husband will be declared void.
10. The Collectors are permitted to make small changes during implementation depending upon the local conditions and the wishes of the people. While making such changes, they should consult the village level Tsunami Rehabilitation Supervisory Committees already constituted and as far as practicable such changes should be applied uniformly to all the new houses in the habitation. The Special Commissioner and Commissioner of Revenue Administration/the State Relief Commissioner may issue supplemental instructions/clarifications wherever necessary.

**BY ORDER OF THE GOVERNOR) LAKSHMI PRANESH, CHIEF SECRETARY TO GOVERNMENT.**

To

The State Relief Commissioner/Special Commissioner and Commissioner of Revenue Administration, Chepauk, Chennai-5;



The Development Commissioner and Principal Secretary to Government, Finance Department, Chennai-9;

The Secretary to Government, Rural Development Department, Chennai-9;

The Secretary to Government, Municipal Administration and Water Supply Department, Chennai-9;

The Secretary to Government, Animal Husbandry and Fisheries Department, Chennai-9;

The Secretary to Government, Social Welfare and Noon Meal Programme Dept., Chennai-9;

The Secretary to Government, Housing and Urban Development Department, Chennai-9;

The Secretary to Government, Public Works Department, Chennai-9;

The Secretary to Government, Transport Department, Chennai-9;

The Secretary to Government, Health and Family Welfare Department, Chennai-9;

The Secretary to Government, Highways Department, Chennai-9;

The District Collectors of Tiruvallur, Chennai, Kancheepuram, Villupuram, Cuddalore, Nagapattinam, Tiruvarur, Thanjavur, Pudukkottai,

Ramanathapuram, Thoothukudi, Tirunelveli and Kanniyakumari;

The Commissioner, Corporation of Chennai, Chennai-3;

The Director of Fisheries, Chennai-5;

The Director of Rural Development, Chennai-104;

The Chairman and Managing Director, TWAD Board, Chennai.

copy to

The Finance (BG.I, II, Revenue, Ways and Means) Dept. Chennai-9;

s.f./s.c.

/ Forwarded by Order /

## Government of Tamil Nadu Memorandum of Understanding

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### Memorandum of Understanding

Between

Collector ..... District, Tamil Nadu

And

Non Governmental Organisation / Voluntary Agency / Private-Public Enterprise /  
Rehabilitation Organisation / Trust

The Tsunami that struck the Tamil Nadu Coastal Districts on 26th December 2004 has left behind a trail of devastation, incalculable loss of life and property and has snatched away the livelihood of lakhs of people. There is an urgent need for rehabilitation and reconstruction in the Tsunami affected area of \_\_\_\_\_ District.

This MoU is being entered into between the Collector of \_\_\_\_\_ District [hereinafter referred to as **FIRST PART**] and \_\_\_\_\_ <NGO / Voluntary Agency / Private-Public Enterprise / Rehabilitation Organisation/Trust > [hereinafter referred to as **SECOND PART**], who jointly wish to respond to specific objectives as per the rehabilitation strategy enunciated by the Government of Tamil Nadu.

\_\_\_\_\_ < NGO / Voluntary Agency / Private-Public Enterprise/Rehabilitation Organisation /Trust > has identified \_\_\_\_\_ villages in \_\_\_\_\_ taluk where it intends to support rehabilitation and reconstruction initiatives in partnership with the Government of Tamil Nadu as per the guidelines specified by the Government of Tamil Nadu.

### NOW THIS MEMORANDUM OF UNDERSTANDING WITNESSETH AS FOLLOWS:

#### NATURE AND SCOPE OF THE WORK

(1) The **SECOND PART** undertakes to construct ..... number of permanent houses and / or associated infrastructural facilities such as Water Supply, Sanitation, Waste Water/Solid Waste Management, Rain Water Harvesting facilities, other ecological features, Roads, Community Centres, School Buildings, Fish and Farm Produce Market Yards, Village Information / Communication Centres, etc. as set out more particularly in the Schedule to this Memorandum of Understanding to the families of the victims affected by tsunami in ..... Villages .....Taluk, in ..... District in accordance with the type design and habitat layout of such quality as approved by the Local Panchayat, and the District Collector in consultation with the beneficiaries especially women based on the overall technical guidelines for disaster resistant buildings specified by the Special Commissioner and Commissioner of Revenue Administration. The **FIRST PART undertakes** the responsibility of providing

water, power and other utility connections as may be found expedient with respect to the site conditions up to the periphery of the habitats as per the existing rules and regulations in force.

#### **ENGAGEMENT OF AGENCIES:**

(2) It shall be the responsibility of the **SECOND PART** to engage only construction agencies with qualified Engineering Personnel with past experience in construction activities and to build the permanent houses in accordance with the rules/regulations/guidelines as laid down by the Special Commissioner and Commissioner of Revenue Administration and the District Planning Authority and the **SECOND PART** will undertake the construction of the houses along with the infrastructure facilities in accordance with the layout or building plan approved by the above mentioned authorities.

#### **INVOLVEMENT OF FACILITATING AND TECHNICAL SUPPORT ORGANISATIONS:**

(3) The **SECOND PART** shall be at liberty to identify and engage such NGOs or voluntary organisations with proven expertise and track record in construction activity and / or in socially productive work with community participation in similar projects elsewhere in the State or country for the purpose of achieving the task as a joint exercise in a transparent and participative manner. The **SECOND PART** shall also be at liberty to involve similar technical support organisations which have developed and proved their expertise in livelihood issues and / or in constructing special type of houses or buildings which are earthquake / cyclone-resistant and shall also educate the potential beneficiaries to undertake such repairs as may be warranted in course of their occupation of the building after the allotment. If any complaints are received by the **FIRST PART** on the role of these subcontracted agencies in terms of quality of works, schedule not being met, being a cause of local unrest or distrust with local population, lack of coordination, or in being involved in religious activities or any activities which affect public interest then the **SECOND PART** agrees to make alternative arrangements to replace such agencies. The decision of the **FIRST PART** in this regard shall be final.

#### **LAND AND OWNERSHIP:**

(4) The **FIRST PART** shall provide the land required for the purpose of construction of the permanent houses and / or associated infrastructure free of cost to the **SECOND PART** to enable them to construct houses for the victims affected by the tsunami in the above mentioned location. The ownership of the land shall vest with the Government of Tamil Nadu and the **FIRST PART** shall reserve the right to transfer the ownership of the land to the victims in such manner and at such time as it deems fit.

#### **IDENTIFICATION OF THE BENEFICIARIES:**

(5) The **FIRST PART** shall identify the beneficiaries in consultation with the **SECOND PART** and the decision of the **FIRST PART** with respect to the selection of beneficiaries shall be final and the **SECOND PART** shall not withdraw from the commitment made on that ground or any other ground that militates against the noble purpose of associating the public spirited bodies with the relief and rehabilitation measures of tsunami victims. The **FIRST PART** shall take into account the views of the local Panchayat or any other local body or the committee for supervising relief and rehabilitation formed by the District Collector at the Panchayat/Ward level in finalising the list of beneficiaries. The **FIRST PART** shall, as far as practicable, identify the prospective owners in advance and link them with specific sites so that the beneficiaries can also participate in the construction activities to the extent possible.

**EQUAL TREATMENT TO ALL:**

(6) The **SECOND PART** shall not insist on providing permanent houses or infrastructure facilities in the selected and allotted areas only to certain class or classes of families on ground of caste, community, creed, religion, language etc. and shall be bound to undertake the project without any discrimination.

**FUNDS FOR THE PROJECT:**

(7) The **SECOND PART** shall invest the requisite amount to undertake the above house construction activity and the provision of infrastructure facilities in terms of <G.O.Ms.25, Revenue (NC.III) Department dated 13.1.2005> OR <G.O.Ms. 26, Revenue (NC.III) Department dated 13.1.2005> and agree to abide by all such conditions and covenants as may be stipulated by the Government of Tamil Nadu from time to time in the larger interest of the welfare of the tsunami victims. Without prejudice to any other guidelines in this regard, the **SECOND PART** shall involve the local beneficiaries in the programme and make use of locally available materials to the extent feasible.

**SEPARATE BANK ACCOUNT AND ACCOUNTS OF THE PROJECT:**

(8) The **SECOND PART** shall open a separate bank account and maintain separate statement of accounts for funding the above-mentioned activities and be subject to audit by a qualified Chartered Accountant or by a firm of Chartered Accountants.

**SCHEDULE OF ACTIVITIES:**

(9) The **SECOND PART** shall give a “**schedule of plan of activities**” indicating the time of the commencement of the work, various time bound and preset milestones of achievement either in the form of “**PERT**” chart or in any form of work plan with an undertaking to abide by the target date of completion of the work. The **FIRST PART** shall have the right to review the schedule of the activities or PERT chart so presented by the **SECOND PART** and modify or vary or alter the schedule of activities in consultation with the **SECOND PART** and fix the time of commencement, course of progress and completion of work/project as may be warranted and the decision of the **FIRST PART** shall be binding on the **SECOND PART**.

**ACCESS TO INSPECTION OF THE WORKS:**

(10) The rebuilding activities of the affected area shall be commenced and completed within the time, as may be stipulated by the **FIRST PART** and the **FIRST PART** shall have a right of inspection of the progress of the work and quality of the materials used in the construction either by himself or through any authorised person/persons with or without prior notice to the **SECOND PART** as the circumstances may demand and the **SECOND PART** is bound to provide all facilities and access to such inspection.

**FACILITIES BY THE DISTRICT ADMINISTRATION:**

(11) The **SECOND PART** will be provided by the **FIRST PART** all nonmonetary facilities such as local body/Government agency clearances for the purpose of accomplishing the above noble task without any violation of the existing rules and regulations with respect to the construction and building activities.

**JOINT REVIEW OF PROGRESS:**

(12) The **FIRST PART** and **SECOND PART** shall jointly review the progress of work at such periodicity as may be found convenient and expedient in the interest of the progress of the work preferably once

in a fortnight and in any case the interval between two successive reviews should not be more than a month. The Second Part shall provide all such information as may be sought for by the First Part in such a format as may be prescribed by the First Part either at such interval of time or at any time as may be required by the First Part. The **FIRST PART** and **SECOND PART** shall agree to nominate an independent Technical Consultant for the purpose of conducting third party auditing and appraisal of the progress of the works and fulfillment of the respective obligations on either part in the course of the progress of the work and during the currency of the MoU.

#### **INCOMPLETE WORKS AND COST RECOVERY:**

(13) In the unlikely event of the **SECOND PART** not performing the committed obligations such as noncompletion of work as per the agreed schedule under this Memorandum of Understanding within such time as may be prescribed by the **FIRST PART** and in such a manner as may be laid down, it shall be lawful for the **FIRST PART** to take over the incomplete work under “**as is where is**” condition sans any liability on the **FIRST PART** after issue of notice not exceeding seven days.

The **FIRST PART** shall also take such action as may be deemed fit to debar and blacklist the **SECOND PART** from undertaking such work in future anywhere in the country and also from claiming any tax exemptions, concessions etc. under the provisions of any act in force under the State and Central Acts.

#### **INSPECTION AND TAKING OVER:**

(14) The **SECOND PART** shall intimate the completion of the construction of houses with provision of infrastructure facilities agreed to be undertaken to the **FIRST PART** within the time as may be laid down by the **FIRST PART** and shall arrange to remove all the debris and building materials scattered around the construction area and dispose of them at its cost and shall take steps to keep the project area clean and neat. The **FIRST PART** shall cause inspection of the constructed houses and the infrastructure established and only on being satisfied of the construction, will arrange to take over the building and infrastructure from the **SECOND PART** with the handing / taking over certificate in writing and signed by both the parts in the presence of the President of the Village Panchayat or any other public representative as may be decided by the **FIRST PART**.

#### **MAINTENANCE OF PUBLIC PEACE AND COMMUNAL HARMONY:**

(15) The **SECOND PART** or any one claiming to possess due authorization of **SECOND PART** shall not indulge, either by himself / herself or through any agencies or organisation or bodies of individuals or in any mode or form of any organisation, in any kind of religious or political or communal activities, especially such activities that will incite or will have the potential to cause hatred or disharmony or both in the minds of the residents or beneficiaries of the area on ground that the **SECOND PART** has invested in the construction of the permanent houses with or without associated infrastructure for the benefit of the allottees of the houses.

(16) The **SECOND PART** shall not be permitted to construct any places of worship of any size and in any manner or form in the village allotted to the **SECOND PART** for the abovementioned purpose. In the event of any violation of this condition, the **FIRST PART** shall immediately terminate the work being done by the **SECOND PART** and shall take appropriate action to complete the remaining work without any liability for the work done.



**FURNISHING OF FALSE INFORMATION:**

(17) If any information furnished by the **SECOND PART** is found to be false or incorrect at any time during the course of the implementation of the above project, the **FIRST PART** shall have the right to terminate the Memorandum of Understanding with prior notice **not exceeding seven days** and in the interest of the Rehabilitation measures to step in and take over the unfinished work including the associated infrastructure facilities without any legal liability to the **FIRST PART** and carry on the above noble task from such resources or by such agencies as may be deemed expedient in the given circumstances.

**MATTERS NOT COVERED BY THE MOU:**

(18) With respect to all residuary matters not specifically covered by the MOU, the instructions of the Special Commissioner and Commissioner of Revenue Administration /State Relief Commissioner shall be final and binding on both the parties.

**ACTS OF GOD AND SUPERVENING IMPOSSIBILITIES:**

(19) “**Force majeure**” clause: Neither party shall be liable to the other for any loss, delay, or any damage occasioned by or arising out of acts of God such as but not restricted to unprecedented flood, volcanic eruptions, earthquake or tsunami or any other convulsion of nature and other acts such as but not restricted to invasion, act of foreign countries, hostilities, or warlike operations before or after the declaration of war, rebellion, military or usurpation of power which prevents performance under the MoU and which could not have been foreseen or avoided.

**AMENDMENTS TO MOU:**

(20) It shall be lawful for the **FIRST PART** to amend, vary, alter, modify, change, revise and redraw either in part or in full any terms and conditions of the MOU, in the interest of the project works, with the mutual discussion and consent of the **SECOND PART**.

**THIRD PARTY ADJUDICATION:**

(21) Should there arise any dispute or difference of opinion with respect to any issue connected with the above mentioned activities, it shall be referred



## HOUSING AND LAND RIGHTS NETWORK *Habitat International Coalition*

### HIC-HLRN Publications

#### Fact-finding Reports

***Impact of War and Forced Evictions on Urbanization in Turkey: Violations of Housing Rights***

Fact-finding Report No. 1 (Istanbul: Habitat International Coalition—HIC, 1996);

***In Quest of Bhabrekar Nagar***

Fact-finding Report No. 2 [a report to enquire into demolitions in Mumbai, India] (Mumbai: HIC, 1997);

***Fact-finding Mission to Kenya on the Right to Adequate Housing: A report on slum conditions, evictions and landlessness***

Fact-finding Report No. 3 (Nairobi: HIC-HLRN, Sub Saharan Regional Programme,<sup>1</sup> 2001);

***Resettlement on Land of Bhutanese Refugees: A report on new threats to repatriation***

Fact-finding Report No. 4 (New Delhi: HIC-HLRN, South Asia Regional Programme—SARP, 2002);

***Restructuring New Delhi's Urban Habitat: Building an Apartheid City?***

Fact-finding Report No. 5 [on the resettlement process of Delhi, India] (New Delhi: HIC-HLRN, South Asia Regional Programme—SARP, 2001)<sup>2</sup>;

***Rebuilding from the Ruins: Listening to the Voices from Gujarat and Restoring People's Rights to Housing, Livelihood and Life***

Fact-finding Report No. 6 [on ethnic conflict in Gujarat, India] (New Delhi: HIC-HLRN, South Asia Regional Programme—SARP and Youth for Unity and Voluntary Action—YUVA, 2002)<sup>3</sup>;

***The Impact of the 2002 Submergence on Housing and Land Rights in the Narmada Valley: Report of a Fact-finding Mission to Sardar Sarovar and Man Dam Projects***

Fact-finding Report No. 7 [on housing and land rights violations and inadequate rehabilitation] (New Delhi: HIC-HLRN, South Asia Regional Programme—SARP, 2003);

***Post-Tsunami Relief and Rehabilitation: A Violation of Human Rights***

Fact-finding Report No. 8 [mission to tsunami-affected areas of Tamil Nadu, India, and Sri Lanka] (New Delhi: HIC-HLRN, South Asia Regional Programme—SARP, 2005).

***Battered Islands: Report of A Fact-finding Mission to Tsunami-affected Areas of the Andaman and Nicobar Islands***

Fact-finding Report No. 9 (New Delhi: HIC-HLRN, South Asia Regional Programme—SARP, 2006).

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<sup>1</sup> In collaboration with Human Rights Monitoring Group (HURIMOG).

<sup>2</sup> In cooperation with Sajha Manch, New Delhi.

<sup>3</sup> Mission conducted at the request of Citizen's Initiative, Ahmedabad.

## Thematic Publications

### ***Trade, Investment, Finance and Human Rights***

Essential Documents (Geneva: International NGO Committee on Human Rights in Trade and Investment—INCHRTI, 2001);

***Children and Right to Adequate Housing: A Guide to International Legal Resources*** (New Delhi: HIC-HLRN, South Asia Regional Programme—SARP and HAQ: Centre for Child Rights, 2002);

الأطفال والحق في السكن: دليل المصادر القانونية الدولية  
(القاهرة: شبكة حقوق الأرض والسكن – شرق الأوسط وشمال إفريقيا، 2004)؛

***Anatomies of a Social Movement: Social Production of Habitat in the Middle East/ North Africa*** (Cairo: HLRN, 2005);

ملاح حركة اجتماعية: انتلج اجتماعي للموئل في شرق الأوسط وشمال أفريقيا  
(القاهرة: شبكة حقوق الأرض والسكن – شرق الأوسط وشمال إفريقيا، 2005)؛

***International Human Rights Standards on Post-disaster Resettlement and Rehabilitation*** [also available in CD format] (Bangalore: HIC-HLRN/SARP and PDHRE – People's Movement for Human Rights Learning, 2005);

حق المرأة في السكن الملائم والأرض : الشرق الأوسط وشمال إفريقيا [وقائع المشاورة الإقليمية في مدينة الاسكندرية] (القاهرة: شبكة حقوق الأرض والسكن – شرق الأوسط وشمال إفريقيا، 2005)؛

***Women's Right to Adequate Housing and Land: Middle East/North Africa*** [Proceedings of the Alexandria Consultation] (Cairo: HIC-HLRN, 2005);

### ***Our Homes, Our Land, Our Culture, Our Human Rights***

[Proceedings of the Pacific Regional Consultation on “Women's Rights to Adequate Housing and Land”] (New Delhi: HIC-HLRN/SARP, 2006);

### ***Tsunami Response: A Human Rights Assessment***

(PDHRE – People's Movement for Human Rights Learning, HIC-HLRN/SARP, and ActionAid International, 2006).

## Country Assessments

### ***Dispossessed: Land and Housing Rights in Tibet***

(New Delhi: Tibetan Centre for Human Rights and Democracy—TCHRD, in collaboration with HIC-HLRN, 2003);

***Standing up against the Empire: A Palestine Guide: From Understanding to Action***, [report of a seminar organized at the World Social Forum III, Porto Alegre, Brazil] (Cairo: HIC-HLRN, Middle East/North Africa (MENA) Regional Program, 2003);

التصدي للامبراطورية : دليل التضامن مع فلسطين : من الفهم الى التحرك [تقرير عن الورشة في صميم المنتدى الاجتماعي العالمي الثالث، بورتو اليفري، برازيل، 2003] (القاهرة: شبكة حقوق الأرض والسكن – شرق الأوسط وشمال إفريقيا، 2005)؛

***Confronting Discrimination: Nomadic Communities in Rajasthan and their Rights to Land and Adequate Housing***

[working paper] (New Delhi: HIC-HLRN, South Asia Regional Programme—SARP, 2004);

***Restoring Values: Institutional Challenges to Providing Restitution and Compensation for Iraqi Housing and Land Rights Victims*** [analysis of the Iraq Property Compensation Commission]

(Cairo: HLRN Middle East/North Africa. 2005);

(القاهرة: شبكة حقوق الأرض والسكن – شرق الاوسط وشمال افريقية، 2005)؛

***Home in Iraq***

[a compilation of issues in the continuous housing and land rights crisis] (Cairo: HLRN Middle East/North Africa, forthcoming 2006).

## **Tools and Techniques Series**

***Community Action Planning: Processes – Ideas – Experiences***

[Manual for human rights based slum upgrading] (New Delhi: HIC-HLRN, South Asia Regional Programme—SARP, YUVA and PDHRE, 2002);

***Urgent Action: HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing***

Tools and Techniques Series No. 1 [methodology and training manual for the HLRN Urgent Action system] (Cairo: HIC-HLRN, Middle East/North Africa (MENA) Regional Programme, 2003);

***Action Urgente! Guide pour la Défense du Droit à un logement Suffisant par l'Action Solidaire***, Série Outils et Techniques No. 1 [méthodologie et manuel pour formation

dans le système HLRN d'Action Urgente] (le Caire: HIC-HLRN, Programme Régional du Moyen Orient/Nord de l'Afrique [MENA], 2003);

[منهجية ودليل لتدريب لنظام التحرك العاجل لدي شبكة حقوق الأرض والسكن] (القاهرة: شبكة حقوق الأرض والسكن - شرق الاوسط وشمال افريقية، 2004)؛

***¡Acción Urgente! Guía de Solidaridad Práctica para la Defensa del Derecho Humano a la Vivienda Adecuada***, Seria Herramientas y Técnicas No. 1 [metodología y

manual de entrenamiento para el sistema de Acción Urgente de la HLRN] (El Cairo: HIC-HLRN, Programa Regional del Medio Oriente/Norte de África [MENA], 2003);

***Housing and Land Rights “Toolkit”***

Tools and Techniques Series No. 2 [methodology in CD form] (Cairo: HIC-HLRN, Global Program, 2003);

***“Juego de Herramientas” para los Derechos por la Vivienda y la Tierra***

[Seria Herramientas y Técnicas No. 2 [manual de orientación metodológica en forma de CD ] (El Cairo: HIC-HLRN, Programa Regional del Medio Oriente/Norte de África [MENA], 2004);

”طاقم الادوات” لحقوق الأرض والسكن

[CD] (القاهرة: شبكة حقوق الأرض والسكن – شرق الاوسط وشمال افريقية، 2004)؛ (القاهرة: شبكة حقوق الأرض والسكن – شرق الاوسط وشمال افريقية، 2004).

## Reports to UN Bodies

### ***Child in Search of the State***

[report parallel to the India country report on the implementation of the right to housing as enshrined in the Convention on the Rights of the Child] (New Delhi: HIC-HLRN, Laya, Human Rights Foundation (HRF) and YUVA, 1998);

### ***“Composite of Economic, Social and Cultural Rights Conditions of the Indigenous Palestinian People under Israel’s Jurisdiction and Control”***

[Joint parallel report to the UN Committee on Economic, Social and Cultural Rights] (HIC-HLRN, Middle East/North Africa (MENA) Regional Programme with seven other Palestinian, Israeli and international NGOs<sup>4</sup>, 2001);

### ***“Implementation of the International Convention on the Rights of the Child: Israel Issues affecting the Indigenous Palestinian People under the State of Israel’s Jurisdiction and Control”***

[joint parallel report to the UN Committee on the Rights of the Child] (Cairo: HIC-HLRN, Middle East/North Africa (MENA) Regional Programme with three other Palestinian NGOs,<sup>5</sup> 2002);

### ***Human Right to Adequate Housing in India***

[joint parallel report to the UN Committee on Economic, Social and Cultural Rights] (New Delhi: HIC-HLRN, South Asia Regional Programme (SARP) with Indian NGOs,<sup>6</sup> 2002);

### ***Acts of Commission, Acts of Omission: Housing and Land Rights and the Indian State***

[joint parallel report to the UN Committee on Economic, Social and Cultural Rights] (New Delhi: HIC-HLRN, South Asia Regional Programme (SARP) with Indian NGOs] (New Delhi: HIC-HLRN, 2004);

***Joint Parallel Report on Government of China’s Implementation of the Human Right to Adequate Housing (Article 11 of the Covenant)*** [joint HIC-HLRN and Center on Housing Rights and Evictions parallel report to the UN Committee on Economic, Social and Cultural Rights, endorsed by the Tibetan Centre for Human Rights and Democracy] (Cairo: HIC-HLRN, 2005).

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<sup>4</sup> Adalah, the Legal Center for Arab Minority Rights in Israel; Association of Forty (Israel); Badil Resource Center for Palestinian Residence and Refugee Rights (Bethlehem); Boston University Civil Litigation Program (USA); LAW Society for the Protection of Human Rights and the Environment (Jerusalem); Palestinian Center for Human Rights (Gaza); World Organization against Torture (Geneva, Switzerland)

<sup>5</sup> Defence for Children International (Palestine); LAW Society for the Protection of Human Rights (Jerusalem), Al Mezan Center for Human Rights.

<sup>6</sup> National Forum for Forest People and Forest Workers, Muktidhara, Youth for Unity and Voluntary Action, Kalpavriksh, Sajha Manch, Citizens Initiative, Narmada Bachao Andolan, and National Campaign for Dalit Human Rights.



Habitat International Coalition (HIC) is an independent, international, non-profit movement of over 450 members specialized in various aspects of human settlements. Members include NGOs, social movements, academic and research institutions, professional associations and like-minded individuals from 80 countries in both the North and South, all dedicated to the realization of the human right to adequate housing for all.

### Many of HIC's programmatic activities are managed through Thematic Structures:

- Housing and Land Rights Network (HLRN)
- Habitat and Environment Committee (HEC)
- Women and Shelter Network (HIC-WAS)
- Working Group on Housing Finance and Resource Mobilization
- Social Production Working Group

### What are HLRN's Objectives?

HLRN shares with general HIC, a set of objectives that bind and shape HLRN's commitment to communities struggling to secure housing and improve their habitat conditions. HLRN seeks to advocate the recognition, defence and full implementation of every human's right everywhere to a secure place to live in peace and dignity by:

- Promoting public awareness about human-settlement problems and needs globally
- Cooperating with UN human rights bodies to develop and monitor standards of the human right to adequate housing, as well as clarify states' obligations to respect, protect, promote and fulfil the right
- Defending the human rights of the homeless, poor and inadequately housed
- Upholding legal protection of the human right to housing as a first step to support communities pursuing housing solutions, including social production
- Providing a common platform for them to formulate strategies through social movements and progressive NGOs in the field of human settlements, and
- Advocating on their behalf in international forums

### To attain these objectives, HLRN member services include:

- Building local, regional and international member cooperation to form effective housing rights campaigns
- Human resource development, human rights education and training
- Enhancing self-representation skills and opportunities
- Action research and publication
- Exchanging and disseminating member experiences, best practices and strategies
- Advocacy and lobbying on behalf of victims
- Developing tools and techniques for professional monitoring of housing rights
- Urgent actions against forced evictions and other housing and land rights violations

To become a member of HIC-HLRN log on to [www.hlrn.org](http://www.hlrn.org)



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