

HOW TO RESPOND TO FORCED EVICTIONS

A Handbook for India



HOUSING AND LAND RIGHTS NETWORK

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HOW TO RESPOND TO FORCED EVICTIONS

SECTION I

INTRODUCTION

Housing and living conditions for the majority of Indians in rural and urban areas are inadequate. The acute shortage of affordable housing; inadequate access to basic services; the absence of legal security of tenure over housing and land; and, forced evictions and displacement, are critical issues affecting the urban and rural poor across the country.

In the absence of government schemes for low cost / social housing for Economically Weaker Sections (EWS) and Low Income Groups (LIG) in India, the national urban housing shortage for the Eleventh Five-Year Plan period (2007–2012) was estimated to be 26.53 million.¹ For the Twelfth Five-Year Plan period (2012–2017), the Technical Group on Urban Housing Shortage (2012–2017) has estimated that the national urban housing shortage is 18.68 million dwelling units, of which the estimated housing shortage for EWS households is 10.49 million while for LIG households it is 7.36 million.² The total rural housing shortage for the Eleventh Five-Year Plan period (2007–2012) was projected at 47.43 million,³ while for the Twelfth Five-Year Plan period (2012–2017) it is estimated to be 43.7 million, of which 90% is for below poverty line (BPL) families.⁴

Given the acute housing deficit in the country, millions are forced to live in grossly inadequate conditions in sub-standard housing, including in slums / informal settlements. The National Urban Housing and Habitat Policy 2007, acknowledges that, “Quality of housing stock in slums is extremely poor. An important reason for this is insecurity of tenure.”⁵ According to the Census of India 2011, around one out of every six households in urban India (17.4%) lives in an informal settlement (slum), while the total number of people living in informal settlements was estimated to be 65 million in 2011. Around 60% of the population of Mumbai and 50% of Delhi lives in informal settlements. If those living in sub-standard housing are also taken into account, the percentage will increase significantly.

- 1 Report of the Eleventh Five-Year Plan, Technical Group on Estimation of Urban Housing Shortage, Ministry of Housing and Urban Poverty Alleviation, Government of India. Available at: <http://mhupa.gov.in/ministry/housing/HOUSINGSHORTAGE-REPT.pdf>
- 2 Report of the Technical Group on Urban Housing Shortage [TG-12] [2012 - 2017], Ministry of Housing and Urban Poverty Alleviation, Government of India, page 51. Available at: http://mhupa.gov.in/W_new/urban-housing-shortage.pdf
- 3 Report of the Eleventh Five-Year Plan, Working Group on Rural Housing, Ministry of Rural Development, Government of India. Available at: http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11_rdhous.pdf
- 4 Report of the Twelfth Five-Year Plan, Working Group on Rural Housing, Ministry of Rural Development, Government of India. Available at: http://planningcommission.nic.in/aboutus/committee/wrkgrp12/rd/wg12_rdhous.pdf
- 5 National Urban Housing and Habitat Policy 2007, Ministry of Housing and Urban Poverty Alleviation, Government of India, paragraph 1.15. Available at: <http://mhupa.gov.in/policies/dupepa/HousingPolicy2007.pdf>

Despite the prevalent inadequate living conditions, urban renewal programmes and interventions aimed at creating ‘slum free, world class cities’; city ‘beautification’ projects; mega events, including sporting events such as the Commonwealth Games; real estate speculation; and, privatisation of basic services, have resulted in an increase in forced evictions and demolitions of informal settlements in cities and towns, most often without due process or regard for the law. In rural areas, forced evictions are caused by large infrastructure and ostensible ‘development’ projects, such as those related to dams, mines, and ports; industrial projects; forced takeover and conversion of farmland; land grabbing for different purposes; and environmental conservation projects. All these lead to the extensive displacement of individuals and communities from their homes and habitats.

While the Government of India does not have any official data on forced evictions and displacement, civil society organizations have estimated that since independence (1947), at least 65-70 million people have been displaced in India, as a result of such ‘development’ projects. The majority of those displaced have not received any resettlement or rehabilitation benefits from the state. In the absence of adequate rehabilitation, forced evictions have exacerbated homelessness, increased distress migration from rural to urban areas, and resulted in the loss of livelihoods, health, education and security, while contributing to increased impoverishment of the affected populations.

The United Nations Committee on Economic, Social and Cultural Rights (CESCR), in its Concluding Observations on India, in May 2008 (in paragraph 31), also noted that:

The Committee... remains deeply concerned about the reports of displacement and forced evictions in the context of land acquisition by private and state actors for the purposes of development projects, including constructions of dams and mining, and that the members of disadvantaged and marginalised groups, in particular, the scheduled castes and scheduled tribes, are adversely affected by such displacement from their homes, lands and their sources of livelihood. The Committee is also concerned that urban renewal projects, sporting events, infrastructure expansion, environmental projects and more recently, the designation of large areas as tax-free Special Economic Zones, have resulted in the displacement of millions of families, most of who have not received adequate compensation and rehabilitation. Furthermore, the Committee is concerned about the lack of effective consultations and legal redress for persons affected by displacement and

by forced evictions, and the inadequate measures to provide sufficient compensation or alternative housing to those who have been removed from their homes and / or their ancestral lands.⁶

While movements such as the ‘right to the city’ have increased awareness on human rights and the need to build more inclusive, equitable and sustainable cities and villages, the reality across India is unfortunately one that continues to discriminate against the rural and urban poor. The rate of forced evictions and displacement has assumed alarming proportions across the country. In the majority of cases, the displaced families do not have any access to remedy, and neither are policies and laws for protection of their human rights being implemented.

RIGHT TO THE CITY (AND VILLAGE)

The movement for the ‘right to the city’⁷ has developed as a response of social movements and civil society organizations in an attempt to ensure better access to, and opportunities for, everyone living in cities, especially the most marginalised and deprived sections. Social movements and organizations from across the world worked together to develop a ‘World Charter on the Right to the City’ that has been endorsed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and UN Habitat, among other agencies. The Charter defines the ‘right to the city’ as: “the equitable usufruct of cities within the principles of sustainability, democracy, equity, and social justice. It is the collective right of the inhabitants of cities, in particular of the vulnerable and marginalised groups, that confers upon them legitimacy of action and organization, based on their uses and customs, with the objective to achieve full exercise of the right to free self-determination and an adequate standard of living.”

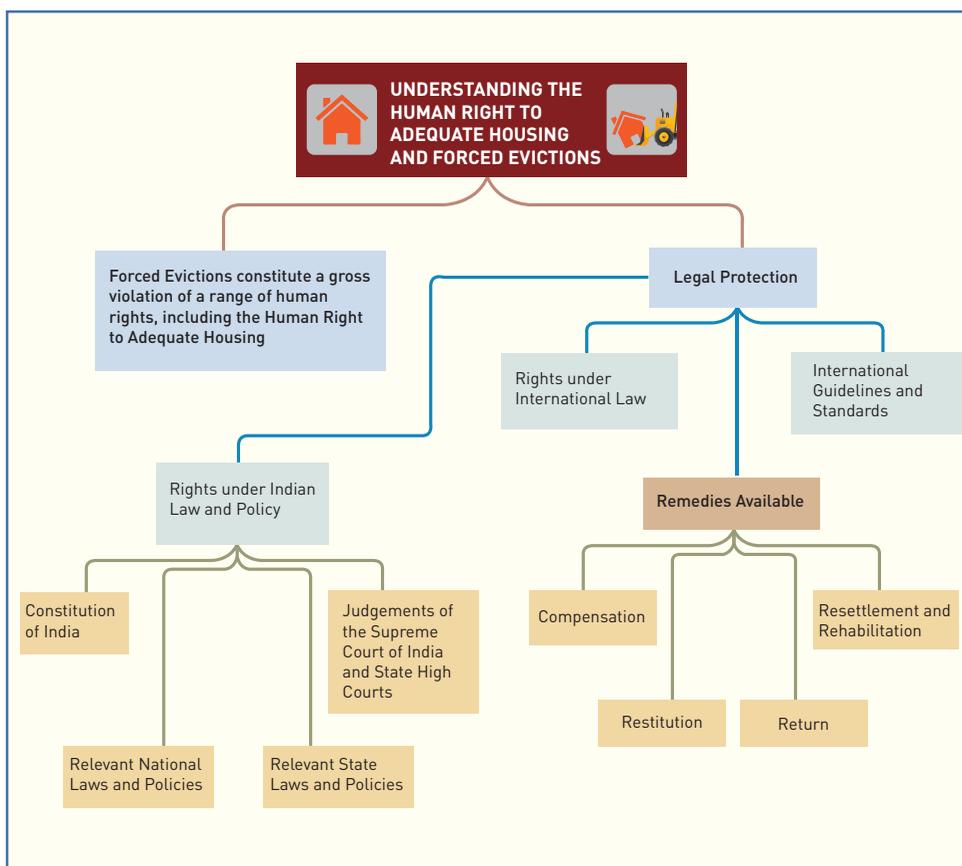
The ‘right to the city’ is thus the right of all residents of the city to an equal share of the benefits offered by the city as well as the right to participate equally in the planning and creation of the city. This global movement for the ‘right to the city’ has also led to mayors in different cities adopting charters to promote human rights in their cities. The Government of India should also work to recognise and promote the ‘right to the city’ and incorporate its principles in all local city / town / village development plans.

6 Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Fortieth Session, May 2008, India. E/C.12/IND/CO/5. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/436/08/PDF/G0843608.pdf?OpenElement>

7 For more information on the *Right to the City*, see: www.hic-net.org, www.unhabitat.org, www.righttothecity.org. Also see, *Taking the Right to the City Forward: Obstacles and Promises*, Miloon Kothari and Shivani Chaudhry, 2009. Available at: http://www.hic-sarp.org/documents/Right_to_the_City_Obstacles_and_Promises_FINAL.pdf

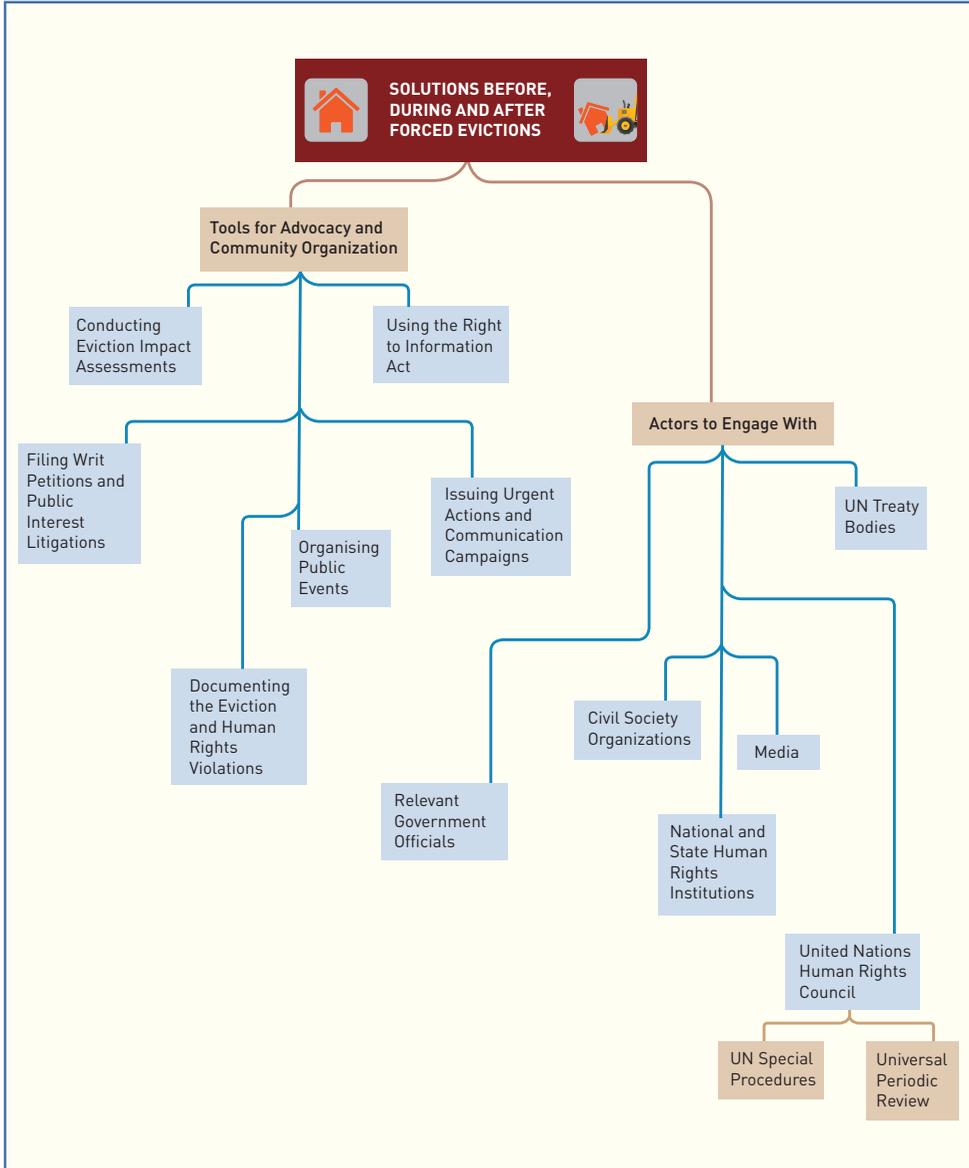
Given this grim reality of forced evictions and displacement in India, Housing and Land Rights Network (HLRN) has developed this Handbook for communities and individuals across the country who are threatened with forced evictions or have been forcibly evicted from their homes and habitats. The Handbook aims to increase awareness on human rights provisions in national and international law, and also suggests tools, mechanisms and strategies that could be used to prevent evictions and seek justice and restitution in situations of evictions.

This Handbook can be divided into two parts, as described in the schematics that follow:



The above diagram represents Sections II - VII of this Handbook, which will help readers understand the concepts of the human right to adequate housing and forced evictions as well as the human rights that are violated as a result of forced evictions.

The reader will be guided through provisions in Indian and international law and policy aimed at protecting human rights, especially the human right to adequate housing and concomitant obligations of the government to protect these rights.



The diagram on the left represents Sections VIII and IX of this Handbook that provide solutions to address forced evictions. Section VIII presents suggested strategies, tools and mechanisms for affected communities, human rights defenders and civil society organizations to use for advocacy to prevent evictions, and for adequate remedy, including restitution, rehabilitation and compensation, in incidents of forced eviction. In Section IX, readers will find lists of relevant national and international actors, including responsible central government ministries, national human rights institutions, housing rights organizations, media agencies, and United Nations treaty bodies and Special Procedures that could be contacted for issues related to forced evictions and for the protection of the human rights to adequate housing and land.





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HOW TO RESPOND TO FORCED EVICTIONS

SECTION II

**WHAT DOES THE
'HUMAN RIGHT
TO ADEQUATE
HOUSING' MEAN?**

While the majority of the world lives in some form of dwelling, around half the world's population does not enjoy all the entitlements necessary for housing to be considered *adequate*. It has been well established in international human rights law and its interpretation that housing is not just a physical structure of four roofs and a wall. It is a much broader concept, which encompasses various material and non-material elements of *adequacy*, which are necessary to create a safe and secure place to live. Furthermore, adequate housing is not merely a desired goal; it is a basic human right of all human beings. This has been affirmed by the Universal Declaration of Human Rights in 1948, which recognises the right to adequate housing as an integral component of the human right to an adequate standard of living.

The Universal Declaration of Human Rights (UDHR) states, in Article 25.1, that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, 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.⁸

On the basis of the provisions established in UDHR, the human right to adequate housing was elaborated and reaffirmed in 1966 by the International Covenant on Economic, Social and Cultural Rights (ICESCR), which in Article 11.1 declares that:

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.⁹

The scope of the human right to adequate housing, as guaranteed by Article 11.1 of ICESCR, was elaborated by the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment 4 on 'The right to adequate housing.'¹⁰ The Committee established that in order for housing to be adequate, it must, at a minimum, include the following seven core elements:

8 Universal Declaration of Human Rights, General Assembly Resolution 217A (III), November 1948. Available at: <http://www.un.org/en/documents/udhr/>

9 International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200A (XXI), December 1966. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

10 General Comment 4, 'The right to adequate housing [Art. 11.1 of the Covenant], United Nations Committee on Economic, Social and Cultural Rights, 1991. Available at: <http://www.unhchr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e>

Legal security of tenure – All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

Availability of services – An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

Affordability – Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.

Habitability – Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.

Accessibility – Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. The human right of disadvantaged groups such as older persons, children, persons with disabilities, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be protected.

Location – Adequate housing must be in a location which allows access to employment options, food, healthcare services, schools, child care centres and other social facilities.

Cultural adequacy – The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity.

These elements of adequacy have been expanded further by civil society organizations such as HLRN, and the UN Special Rapporteur on adequate housing,¹¹ to include:

Physical security – Every woman, man, youth and child has the right to live and conduct her / his private life in a secure place and be protected from threats or acts that compromise their mental and / or physical well-being or integrity inside or outside the home.

Access to information – Individuals and communities must have access to appropriate data, documents and intellectual resources that impact their human right to adequate housing.

Participation – At all levels of the decision-making process related to the provision of housing and fulfillment of the human 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 their housing.

Access to land, water and other natural resources – Every community must have access to natural resources necessary for its survival and livelihood, including, *inter alia*, fuel, fodder, water and building materials.

Freedom from dispossession, damage and destruction – All individuals and communities have a right to a place to live without threat of dispossession from their land, all forms of their property, their homes and resources, as well as all individual and collective holdings required to sustain their livelihoods.

Resettlement, restitution, compensation, non-refoulement and return – The rights to resettlement and freedom of movement must be protected. Any resettlement or compensation arrangement, whatever the cause, must be consensual, fair and adequate to meet individual and collective needs.

Access to remedies – Provision of domestic legal and other remedies is an important part of protecting the human right to adequate housing. Individuals and groups must be protected from abuse by landlords, property developers, landowners or any other third party capable of abusing their rights. Where such infringements do occur, public authorities should act to preclude further deprivations as well as guarantee access to judicial redress, including legal and equitable remedies for any infringement caused.

11 See, *Questionnaire on Women and Housing*, Annex Three of the Report of the UN Special Rapporteur on adequate housing, Miloon Kothari, A/HRC/4/18, February 2007. Available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/WomenAndHousing.aspx>

Education and empowerment – Individuals and communities should have access to technical assistance and other means to enable them to improve their living standards and fully realise their economic, cultural and social rights, and development potential.

Freedom from violence against women – The state must prevent all forms of violence against women committed by either state or non-state actors to ensure women's human right to adequate housing.

The UN Special Rapporteur on adequate housing defined the human right to adequate housing, as: "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."¹²

The human right to adequate housing is thus integral to the realisation of the right to live with dignity, and is inextricably linked to other human rights such as the rights to work / livelihood, health, food, water, land, education, and security of the home and person.

12 Report of the Special Rapporteur on adequate housing, Miloon Kothari, E/CN.4/2006/41, March 2006. Available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx>



HOW TO RESPOND TO FORCED EVICTIONS

SECTION III

**WHAT IS A FORCED
EVICTION?**

Definition of Forced Eviction

The practice of forced evictions involves the involuntary removal of persons from their homes or land, directly or indirectly attributable to the state. The right not to be forcibly evicted is an element of the human right to adequate housing.¹³

The UN Committee on Economic, Social and Cultural Rights defines forced eviction as the:

[P]ermanent or temporary removal against the will of individuals, families or communities from their homes or land, which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.¹⁴

The UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007)¹⁵ further expanded the definition of forced evictions to mean:

[A]cts and / or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and / or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.

The UN also has addressed the issue of forced evictions in Resolution 1993/77¹⁶ and Resolution 2004/28¹⁷ of the Human Rights Commission. In Resolution 2004/28, the Commission recognised that:

The often violent practice of forced eviction involves the coerced and involuntary removal of persons, families and groups from their homes, lands

13 Fact Sheet No. 25, *Forced Evictions and Human Rights*, United Nations Office of the High Commissioner for Human Rights. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet25en.pdf>

14 General Comment 7, 'The right to adequate housing [Art. 11.1 of the Covenant]: forced evictions,' United Nations Committee on Economic, Social and Cultural Rights, 1997. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\[symbol\]/CESCR+General+Comment+7.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/[symbol]/CESCR+General+Comment+7.En?OpenDocument)

15 Presented in the report of the UN Special Rapporteur on Adequate Housing, Miloon Kothari, A/HRC/4/18, February 2007. Available at: http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf
Translations in other languages available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/ForcedEvictions.aspx> and www.hic-sarp.org

16 United Nations Commission on Human Rights Resolution 1993/77, 'Forced Evictions', March 1993.

17 United Nations Commission on Human Rights Resolution 2004/28, 'Prohibition of Forced Evictions', April 2004.

and communities, whether or not deemed legal under prevailing systems of law, resulting in greater homelessness and inadequate housing and living conditions.

Which Human Rights are Affected during a Forced Eviction?

United Nations Human Rights Commission Resolutions 1993/77 and 2004/28 affirmed that forced evictions violate human rights.

In Resolution 1993/77,¹⁸ the UN Human Rights Commission stated that, “The practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing.”

When forced evictions are carried out, they violate a range of internationally recognised human rights. These include the:

- Human right to adequate housing;
- Human rights to security of the person, and security of the home;
- Human right to health;
- Human right to food;
- Human right to water;
- Human right to work / livelihood;
- Human right to education;
- Human right to freedom from cruel, inhuman and degrading treatment;
- Human right to freedom of movement;
- Human right to information; and,
- Human right to participation and self-expression.

The authorities carrying out forced evictions especially violate people’s entitlements to security of tenure and freedom from forced evictions; access to, and benefit from, public goods and services; information, capacity and capacity-building; participation

18 United Nations Commission on Human Rights Resolution 1993/77, ‘Forced Evictions’, March 1993.

and self-expression; rights to resettlement and adequate compensation for violations and losses; and physical security and privacy. All are elements of the human right to adequate housing as recognised in international law.

As a result of forced evictions, people are often left homeless and destitute, without means of earning a livelihood, and with no effective access to legal or other remedies. Forced evictions are often associated with physical and psychological injuries to those affected, with specific impacts on women, children, persons already living in extreme poverty, indigenous peoples, minorities and other marginalised groups.

Indian case law has also recognised the violation of human rights inherent in the act of forced evictions. The High Court of Delhi, in the case *Sudama Singh and Others vs. Government of Delhi and Anr.* (2010),¹⁹ clearly stated:

23. The denial of the benefit of the rehabilitation to the petitioners violates their right to shelter guaranteed under Article 21 of the Constitution. In these circumstances, removal of their jhuggies²⁰ without ensuring their relocation would amount to gross violation of their Fundamental Rights.
44. (...) What very often is overlooked is that when a family living in a jhuggi is forcibly evicted, each member loses a “bundle” of rights – the right to livelihood, to shelter, to health, to education, to access to civic amenities and public transport and above all, the right to live with dignity.

In the case, *P.K. Koul and Ors. vs. Estate Officer and Anr. and Ors.* (2010),²¹ the High Court of Delhi also stated that:

60. (...) implementation of the threat of forcible eviction would result in violation of the fundamental and basic human rights of the petitioner...
194. Experience and examples abound in this city and the aforementioned judicial precedents of forcible evictions relating to slums and jhuggi dwellers. Defenceless and disadvantaged citizens are forcibly evicted from their shelters which are then destroyed.

19 *Sudama Singh and Others vs. Government of Delhi and Anr.*, W.P. (C) Nos. 8904/2009, 7735/2007, 7317/2009 and 9246/2009, High Court of Delhi, 11 February 2010.

20 'Jhuggi' is a Hindi word that refers to a house in an informal settlement.

21 *P.K. Koul and Ors. vs. Estate Officer and Anr. and Ors.*, W.P. (C) No. 15239/2004 and CM No. 11011/2004, High Court of Delhi, 30 November 2010.

228. (...) The UN Commission on Human Rights has unequivocally stated that forced evictions are a gross violation of human rights. The International Community has long recognised forced eviction as a serious matter and it has been reported repeatedly that clearance operations should take place only when conservation arrangements and rehabilitation are not feasible, relocation measures stand made.

United Nations Human Rights Commission Resolution 2004/28, recognised the provisions on forced evictions contained in the Habitat Agenda of 1996,²² and recommended that, “All Governments ensure that any eviction that is otherwise deemed lawful is carried out in a manner that does not violate any of the human rights of those evicted.”²³



22 The Habitat Agenda, Istanbul Declaration on Human Settlements, June 1996. Available at: http://www.unhabitat.org/downloads/docs/2072_61331_ist-dec.pdf

23 United Nations Commission on Human Rights Resolution 2004/28, 'Prohibition of Forced Evictions', April 2004.



HOW TO RESPOND TO FORCED EVICTIONS

SECTION IV

**IN CASE OF A FORCED
EVICTION: WHAT ARE
YOUR RIGHTS UNDER
INDIAN LAW AND
POLICY?**

1. Constitution of India

The Constitution of India is firmly grounded in the principles of liberty, fraternity, equality and justice. While the right to adequate housing is not explicitly articulated as a human right, it is encompassed within the Fundamental Rights and Directive Principles provided in the Constitution.

The **Fundamental Rights** guaranteed by the Constitution of India, which are linked to the protection and guarantee of the human right to adequate housing, include:

- Article 21** The right to protection of life and personal liberty except according to procedure established by law.
- Article 14** The right of every citizen to be treated equally before the law or be given protection of the laws within the territory of India.
- Article 15 (1)** The right of every citizen to be protected against any discrimination on grounds of sex, religion, race, caste or place of birth.
- Article 19 (1) (d)** The right of every citizen to move freely throughout the territory of India.
- Article 19 (1) (e)** The right of every citizen to reside and settle in any part of the territory of India.
- Article 19 (1) (g)** The right of every citizen to practice any profession, or to carry on any occupation, trade or business.

The Constitution provides for **Directive Principles**, according to which the Indian State must formulate its policies. These include:

- Article 39 (1)** State policy to be directed to securing for both men and women equally the right to an adequate means of livelihood.
- Article 42** Provisions to be made by the State for securing just and humane conditions of work and for maternity relief.
- Article 47** Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

2. Relevant National Laws

a) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006)

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006²⁴ recognises and gives rights over forest land to Scheduled Tribes (STs) and other traditional forest dwellers in order to ensure their livelihood and food security. The Act, in its introduction, aims to give tenurial and access rights to forest dwelling Scheduled Tribes and other traditional forest dwellers, including those who were forcefully displaced due to the state's development-based activities. In the case of forced evictions, STs and other traditional forest dwellers are given specific rights to claim rehabilitation and 'land compensation' under Sections 3 (1) (m), 4 (2), and 4 (8).

Section 3 (1) (m) of the Act provides the right to *in situ* (on site) rehabilitation, including alternative land in cases of illegal eviction or displacement from forest land. Section 4 (8) protects the right to forest land of those who were displaced from their dwelling and cultivation without 'land compensation' as a result of state development interventions and where the acquired land has not been used within five years of acquisition.

Section 4 (2) provides that no forest rights holders shall be resettled or have their rights affected in any manner unless: (a) a resettlement or alternatives package has been prepared, which secures livelihood for the affected individuals; (b) free informed consent of the concerned *gram sabhas* (village councils) has been obtained, and; (c) facilities and allocation of land at the resettlement site / location are complete.

b) The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (2013)

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act²⁵ came into force on 1 January 2014. The

24 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, Ministry of Law and Justice, Government of India. Available at: <http://tribal.nic.in/Content/ForestRightActOtherLinks.aspx>

25 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, Ministry of Law and Justice, Government of India. Available at: http://dolr.nic.in/dolr/downloads/pdfs/Act_Land_Acquiition_2013.pdf

Act seeks to ensure a transparent and participatory process of land acquisition, and claims to provide just and fair compensation and adequate rehabilitation and resettlement to affected persons and families. The Act also aims to ensure that the outcome of acquisition should be that, “Affected persons become partners in development, leading to an improvement in their post-acquisition social and economic status.”²⁶

Application of the Act

The provisions of the Act will be applicable when land is acquired by the government for its own use, hold and control, including for Public Sector Undertakings and 'public purpose.' Section 2 (1) of the Act provides a list of public purpose projects for which land can be acquired. This includes projects for sports and health care programmes;²⁷ housing for low income groups;²⁸ planned development of village sites or any site in urban areas;²⁹ and, provision of land for residential purposes for weaker sections,³⁰ and poor or landless persons, displaced persons or persons residing in areas affected by natural calamities.³¹

Section 2 (2) states that the Act will also apply in case land is acquired for public private partnership (PPP) projects and by private companies for public purpose. In the case of acquisition for private companies, there must be prior consent from at least 80 per cent of the affected families and for PPP projects, prior consent must be obtained from at least 70 per cent of the affected families.

Under Section 99 of the Act, change of the purpose or related purpose for which land is sought to be acquired is not permissible.

Social Impact Assessment Study

Section 4 of the Act states that before land is acquired for a ‘public purpose,’ the Panchayat (local governing council), Municipality or Municipal Corporation must carry out a Social Impact Assessment study to assess whether the proposed acquisition serves any public purpose, and to estimate the number of affected families and extent of lands, houses and common properties likely to be affected. The study must also include whether an alternative site has

26 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, Page 1.

27 Section 2 (1) (b) (vi).

28 Section 2 (1) (d).

29 Section 2 (1) (e).

30 Ibid.

31 Section 2 (1) (f).

been considered for land acquisition. The study must consider the impact that the land acquisition may have on the livelihood of affected families, sources of drinking water, healthcare facilities, public utilities, schools and education or training facilities, electricity supply, *anganwadis* (crèches), places of worship, parks, burial and cremation grounds, and land for traditional tribal institutions.

Under Section 8 (1), the government must ensure that the proposed acquisition is legitimate and is meant for *bona fide* public purpose. The benefits of the acquisition should outweigh the social costs and adverse impacts. The government must also use land which has been previously acquired and is unutilised.

Notification

With regard to notifying affected communities of the proposed land acquisition, Section 11 of the Act provides that details of the land acquisition shall be published in the official gazette and two daily newspapers circulated in the locality of the area, in the local language in the Panchayat, Municipality or Municipal Corporation of the affected areas, and uploaded on the website of the appropriate government.

Compensation

Section 28 of the Act provides that compensation should be determined by the market value of the land to be acquired by including all assets attached to the land. Compensation should also take into account: damages sustained due to loss of standing crops and trees; loss of property and earnings; forced change of residence or place of business; diminution of profits of the land between the time of publication of the declaration of acquisition and the time of the Collector's taking possession of the land; and, any other ground which may be in the interest of equity and justice of the affected families.

Rehabilitation and Resettlement

Provisions for rehabilitation and resettlement are provided in Section 31 of the Act. The rehabilitation and resettlement award shall include, *inter alia*, a rehabilitation and resettlement amount payable to the family; particulars of the land and house to be allotted to displaced families; payment of one time subsistence and transportation allowance; payment for cattle shed and petty shops; and, particulars of any fishing rights that may be involved.

Schedules in the Act

The Act also contains three schedules dealing with compensation for land owners, rehabilitation and resettlement entitlements, and infrastructural amenities. The first schedule contains provisions on the 'minimum compensation package' to be allotted to the affected persons. The second schedule provides elements of rehabilitation and resettlement entitlements for both land owners and families whose livelihood is primarily dependent on the land acquired. For example, if a house is lost in rural areas, a constructed house must be provided as per the Indira Awas Yojana rules. The third schedule contains provisions on infrastructural facilities and basic minimum amenities to be provided at the resettlement sites. This is necessary to secure a reasonable standard of community life for the affected families. Some of the provisions include proper roads, drainage as well as sanitation facilities, provision of drinking water, *panchayat ghars*, post offices, playgrounds for children, primary health care centres, places of worship and appropriate security arrangements.

Scheduled Castes and Scheduled Tribes

Special provisions for Scheduled Castes and Scheduled Tribes have been made in Section 41 and 42 of the Act. It states that as far as possible, no acquisition of land shall be made in the Scheduled Areas and if the need arises, such acquisition shall be done only as a 'demonstrable last resort.' For acquisition in Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils shall be obtained, including acquisition in case of urgency. In case of involuntary displacement of Scheduled Castes or Scheduled Tribes, a Development Plan shall be prepared laying down the details of procedure for settling land rights. The Development Plan shall also contain a programme for development of alternative fuel, fodder and non-timber forest produce resources on non-forest lands within a period of five years, sufficient to meet the requirements of tribal communities as well as Scheduled Castes. The affected families of Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity. In case the affected Scheduled Tribes, other traditional forest dwellers and Scheduled Castes have fishing rights in a river or pond or dam in the affected area, they shall be given fishing rights in the reservoir area of the irrigation or hydel project. If the affected families are relocated outside of the district, they shall be paid an additional 25 per cent rehabilitation and resettlement benefit to which they are entitled in monetary terms along with a one-time entitlement of Rs 50,000.

Unutilised land

If any land remains unutilised for a period of five years from the date of taking possession, the Act states that the same land shall be returned to the original owner or to the Land Bank of the appropriate Government under Section 101.

c) The Protection of Human Rights Act (1993)

The Protection of Human Rights Act³² provides for the creation of the National Human Rights Commission and state human rights commissions in India, and also lays down their powers and functions. The origin of these commissions can be traced to the Vienna Declaration and Programme of Action³³ adopted in June 1993 and the creation of the United Nations Office of the High Commissioner for Human Rights in December 1993.

The Act marked the Indian state's readiness to assume responsibility for realising human rights of all its citizens in accordance with the Vienna Declaration, where it is stated (Part I, Paragraph 1) that, "(h)uman rights and fundamental rights are the birthright of all human beings; their protection and promotion is the first responsibility of Governments."

In Section 2 (d) the Act provides a definition for human rights:

... "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

The national and state human rights commissions established by this Act have been granted the power of a civil court while trying a suit under the Code of Civil Procedure 1908. These commissions can inquire *suo moto* or on the basis of petitions presented to them by a victim or any person on his / her behalf, into complaints of violation of human rights or negligence in the prevention of such violation by a public servant. Following investigation, the commissions can recommend to the concerned government or authority to pay compensation, to initiate proceedings for prosecution, and / or approach the Supreme Court of India or the High Court concerned for such directions.

32 The Protection of Human Rights Act 1993. Available at: <http://nhrc.nic.in/documents/Publications/HRAActEng.pdf>

33 World Conference on Human Rights, Vienna Declaration and Programme of Action, July 1993. Available at: [www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en)

d) The Slum Areas (Improvement and Clearance) Act (1956)

The Slum Areas (Improvement and Clearance) Act 1956³⁴ aims to “provide for the improvement and clearance of slum areas in certain Union Territories and for the protection of tenants in such areas from eviction.” Since the Act is a central government legislation, it is only applicable in areas under control of the centre, which are the Union Territories of India. Several other states, such as Tamil Nadu, have enacted similar laws or extended the Act to their states.

The Act contains provisions for notification and compensation in case of demolition or improvement of buildings ‘unfit for human habitation.’ Section 19 of the Act specifically pertains to the protection of tenants in notified slum areas from eviction, and provides for procedures for adequate notification and alternative accommodation.

e) The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act (2014)

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014³⁵ was promulgated as a law in February 2014 by the Indian Parliament. It provides for the creation of Town Vending Committees that are required to conduct a survey of all street vendors within their jurisdiction and ensure that identified vendors are accommodated in vending zones. It states that no street vendor shall be evicted till the survey has been completed. The Act proposes that relocation of street vendors should be exercised as a last resort. Accordingly, a set of principles to be followed for ‘relocation’ is proposed to be provided for in the second schedule, which states that: (i) relocation should be avoided as far as possible, unless there is clear and urgent need for the land in question; (ii) affected vendors or their representatives shall be involved in planning and implementation of the rehabilitation project; (iii) affected vendors shall be relocated so as to improve their livelihoods and standards of living or at least to restore them, in real terms to pre-evicted levels; and, (iv) natural markets where street vendors have conducted business for over fifty years shall be declared as heritage markets, and the street vendors in such markets shall not be relocated.³⁶

34 Amended in 1964.

35 The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill was passed by the Lower House of the Indian Parliament (Lok Sabha) on 6 September 2013 and by the Upper House (Rajya Sabha) on 19 February 2014.

36 Press Information Bureau, Government of India, Ministry of Housing and Urban Poverty Alleviation, 19 February 2014. Available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=103949>

3. Relevant National Policies

Several national policies also recognise the need of the government to provide improved housing and shelter, and resettlement and rehabilitation in instances of eviction and displacement.

a) National Urban Housing and Habitat Policy (2007)

The stated focus of India's National Urban Housing and Habitat Policy 2007,³⁷ is the, "Provision of 'Affordable Housing for All' with special emphasis on vulnerable sections of society such as Scheduled Castes / Scheduled Tribes, Backward Classes, Minorities and the urban poor."³⁸ The Policy also seeks to ensure equitable supply of land, shelter and services at affordable prices. It gives preference to provision of shelter to the urban poor at their present location or near their work place,³⁹ and also adopts an approach of *in situ* (on site) rehabilitation.⁴⁰

The Policy claims to make special provisions to include women at all levels of decision-making for ensuring their participation in the formulation and implementation of housing policies and programmes. It also addresses the special needs of women-headed households, single women, working women, and women in difficult circumstances with regard to housing serviced by basic amenities.⁴¹

b) Draft National Slum Policy (2001)

India still does not have a national slum policy. What exists is a draft that contains few provisions related to resettlement. These include:

- State / Urban Local Bodies (ULB) should explore alternatives to resettlement before a decision is taken to move people;
- Relocation distances should be minimised to reduce the impact on livelihoods;

37 National Urban Housing and Habitat Policy 2007, Ministry of Housing and Urban Poverty Alleviation, Government of India. Available at: <http://mhupa.gov.in/policies/duempa/HousingPolicy2007.pdf>

38 National Urban Housing and Habitat Policy 2007. 'Policy sets goal of "Affordable Housing for All" with special emphasis on urban poor,' Press Information Bureau, Government of India, October 2007. Available at: <http://pib.nic.in/newsite/erelease.aspx?relid=33884>

39 National Urban Housing and Habitat Policy 2007, Ministry of Housing and Urban Poverty Alleviation, Government of India, Page 6. Available at: <http://mhupa.gov.in/policies/duempa/HousingPolicy2007.pdf>

40 Ibid, Page 32.

41 Ibid, Page 14.

- Resident dwellers must be provided with some choice of alternative sites, and where feasible, an alternative rehabilitation package;
- All resettlement sites should be adequately serviced and provision should be made for public transportation prior to resettlement;
- The livelihoods of affected persons must be sufficiently compensated within a fixed period;
- Participation of primary stakeholders, particularly women, in planning and decision-making is a prerequisite for any resettlement process;
- Any urban development project that leads to involuntary resettlement of communities must make provisions to cover the costs of resettlement and rehabilitation; and,
- The timing of interventions must also reduce dislocation and discomfort, especially during periods of inclement weather.

c) Rajiv Awas Yojana

Announced in 2009, Rajiv Awas Yojana (RAY) is a national scheme of the Ministry of Housing and Urban Poverty Alleviation that intends to, “build a ‘slum free’ country while providing shelter and basic services to the urban poor.” The scheme is being implemented in 20 states across the country, in different ways. The Rajiv Awas Yojana Guidelines 2013-2022⁴² list the major components and operationalisation elements of the scheme. While RAY has the potential to improve housing conditions for the urban poor through *in situ* (on site) upgrading and the provision of legal security of tenure, it is important that state governments work to ensure that RAY does not, in any way, facilitate evictions and the takeover of public land for private profit. Communities need to be informed of any RAY projects being undertaken in their cities, and their participation should be guaranteed in them. The provisions for legal security of tenure under RAY must ensure a guarantee against forced evictions. States must not use arbitrary classifications such as ‘tenable’ and ‘untenable’ slums as a means to evict residents. The human right to adequate housing framework should be adopted by state governments for implementation of all RAY projects.

⁴² Rajiv Awas Yojana Guidelines 2013-2022, Ministry of Housing and Urban Poverty Alleviation, Government of India. Available at: <http://mhupa.gov.in/ray/RAYGuidelines.pdf>

4. Court Judgements

a) Judgements of the Supreme Court of India

The Supreme Court of India, in several judgements, has held that the human right to adequate housing is a fundamental right emanating from the right to life protected by Article 21 of the Constitution of India (“No person shall be deprived of his life or personal liberty except according to procedure established by law”). There have been several important court judgments that have clearly established the relation between the right to housing and the right to life, as guaranteed by Article 21.⁴³

In the case of *U.P. Avas Evam Vikas Parishad vs. Friends Coop. Housing Society Ltd.* (1996),⁴⁴ the Supreme Court affirmed that:

The right to shelter is a fundamental right, which springs from the right to residence under Article 19 (1) (e) and the right to life under Article 21.

In 1981, the Supreme Court, in the case *Francis Coralie vs. Union Territory of Delhi*,⁴⁵ stated:

We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow beings.

In the case of *Chameli Singh and Others vs. State of Uttar Pradesh* (1996),⁴⁶ the Supreme Court provided a holistic understanding of the right to shelter and adequate housing. It declared:

Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation

⁴³ This has been established in numerous Supreme Court decisions, including *U.P. Avas Evam Vikas Parishad vs. Friends Coop. Housing Society Ltd*; *Chameli Singh and others vs. State of UP* [(1996) 2 SCC 549 132]; *Francis Coralie vs. Union Territory of Delhi* [AIR 1981 SC 746, at 753]; *Shantistar Builders vs. Narayan Khimalal Totame* [(1990) 1 SCC 520]; *Olga Tellis vs. Bombay Municipal Corp.* [(1985) 3 SCC 545].

⁴⁴ [1996] AIR 114 1995 SCC.

⁴⁵ [1981] AIR SC 746 753.

⁴⁶ [1996] 2 SCC 549.

and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right... Want of decent residence therefore frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself.

In 1990, in the *Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan and Others*⁴⁷ case, the Supreme Court directed the state to construct affordable houses for the poor:

The State has the constitutional duty to provide shelter to make the right to life meaningful.

Significantly, in 1990, the Supreme Court recognised the right of children to adequate housing. In the case *Shantistar Builders vs. Narayan Khimalal Totame*,⁴⁸ the Court observed:

The Constitution aims at ensuring the full development of every child. That would be possible only if the child is in a proper home.

The Supreme Court has also upheld the right to property. In the case of *Tukaram Kana Joshi and Others vs. MIDC and Others*,⁴⁹ the Court noted that:

The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi-faceted dimension. The right to property is considered, very much to be a part of such new dimension.

47 [1997] 11 SCC 121.

48 [1990] 1 SCC 520.

49 Civil Appeal No. 7780 of 2012.

b) Judgements from State High Courts

Certain interim orders and judgements from High Courts across the country have also upheld the human right to adequate housing, and condemned the practice of forced evictions without due process and adherence to human rights standards.⁵⁰

The High Court of Delhi, in the case of *P.K. Koul and Ors. vs. Estate Officer and Anr. and Ors.* (2010),⁵¹ upheld the right to adequate housing and affirmed that:

- 40 (...) right to residence and to settle in any part of the country is assured to every citizen as a fundamental right under Article 19 (1) (e) of the Constitution of India... The right to shelter springs from this right and has been considered to be an integral part for a meaningful enjoyment of right to life under Article 21 of the Constitution of India.
56. It is essential to note that in fact no new right is being created, recognized or reiterated by the international instruments or the said guidelines. The right to shelter of every person has been recognized as an essential concomitant of right to life under Article 21 of the Constitution of India. It would clearly be covered under the definition of a “human right” under Section 2(1)(d) of the Protection of Human Rights Act, 1993, which includes rights relating to life, liberty, equality and dignity. The right to shelter, an essential part of right to life, would therefore also be a statutorily recognized right under Section 2(1)(d) of the Act of 1993 and enforceable as such also.
170. In 1995 (2) SLR 72 P. G. Gupta vs. State of Gujarat the Supreme Court had further declared that it was the duty of the state to construct houses at reasonable costs and make them easily accessible to the poor, and that such principles have been expressly embodied in our Constitution to ensure socio-economic democracy so that everyone has a right to life, liberty and security of the person.

50 See, *Reaffirming Justiciability: Judgements on the Human Right to Adequate Housing from the High Court of Delhi*, Housing and Land Rights Network, New Delhi, 2013. Available at: http://www.hic-sarp.org/documents/Reaffirming_Justiciability_Judgements_on_HRAH_from_High_Court_of_Delhi.pdf

51 *P.K. Koul and Ors. vs. Estate Officer and Anr. and Ors.*, W.P. (C) No. 15239/2004 and CM No. 11011/2004, High Court of Delhi, 30 November 2010.

171. The Supreme Court has repeatedly reiterated the well settled position that the state has the constitutional duty to provide adequate facilities and opportunities to all including the disadvantaged and the displaced, by distributing its wealth and resources for the settlement of life and erection of shelter over their heads. The court has emphasized the constitutional right of every citizen to migrate and settle in any part of India for better employment opportunity and it would be the duty of the state to provide right to shelter to the disadvantaged in society (Ref: Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan & Ors).
175. It is the constitutional duty of the state to protect human rights and the fundamental rights of all persons. The distinction between such rights and legal rights which may require adjudication in appropriate proceedings has also been emphasised on several occasions.
182. The expansion and interpretation by the courts has affirmatively established a positive right to housing and shelter for every person as part of the fundamental right. Human rights and fundamental rights are inalienable; their violations are indefensible. The state is under a constitutional obligation and duty to protect these rights. When violated, a citizen is entitled to their enforcement. The constitutional mandate upon it, is coupled with the statutory duty and public law obligations to ensure the protection of the fundamental and basic human rights to all, in addition to its obligation under the several international instruments noticed above. This essentially remains in the exclusive domain of state functions. Failure to protect the citizens from eminent loss of life and property as well as maintenance of public order, implicates the state for culpable inaction.

In the case of *Sudama Singh and Others vs. Government of Delhi and Anr.* (2010),⁵² the High Court of Delhi also established that housing is a human right. It stated:

26. Adequate housing serves as the crucible for human well-being and development, bringing together elements related to

52 *Sudama Singh and Others vs. Government of Delhi and Anr.*, W.P. (C) Nos. 8904/2009, 7735/2007, 7317/2009 and 9246/2009, High Court of Delhi, 11 February 2010.

ecology, sustained and sustainable development. It also serves as the basic unit of human settlements and as an indicator of the duality of life of a city or a country's inhabitants.

34. The recognized importance of the right to housing over time has led to its ratification and reinforcement through other international declarations, conventions and conferences, in which more precise and complex objectives have been developed.
- 39 (...) Protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter to enjoy the meaningful right to life. The right to residence and settlement was seen as a fundamental right under Article 19 (1) (e) and as a facet of inseparable meaningful right to life as available under Article 21.

ABSENCE OF HOUSING FOR THE WORKING URBAN POOR

The High Court of Delhi recognised the structural causes of informal settlements and the contribution of the working poor to the city and its economy, and stated:

In the last four decades, on account of pressure on agricultural land and lack of employment opportunities in the rural areas, a large number of people were forced to migrate to large cities like Delhi. However, in cities, their slender means as well as lack of access to legitimate housing, compelled them to live in existing jhuggi clusters or even to create a new one. They turned to big cities like Delhi only because of the huge employment opportunities here but then they are forced to live in jhuggies because there is no place other than that within their means. These jhuggi clusters constitute a major chunk of the total population of the city. Most of these persons living in the slums earn their livelihood as daily wage labourers, selling vegetables and other household items, some of them are rickshaw pullers and only few of them are employed as regular workers in industrial units in the vicinity while women work as domestic maid-servants in nearby houses. The city would simply come to halt without the labour provided by these people. Considerations of fairness require special concern where these settled slum dwellers face threat of being uprooted. Even though their jhuggi clusters may be required to be legally removed for public projects, but the consequences can be just as devastating when they are uprooted from their decades long settled position.

*(Sudama Singh and Others vs. Government of Delhi and Anr.,
February 2010, paragraph 44)*



“THE STATES PARTIES 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.”

Article 11.1, International Covenant on Economic, Social and Cultural Rights

HOW TO RESPOND TO FORCED EVICTIONS

SECTION V

**IN CASE OF A FORCED
EVICTION: WHAT ARE
YOUR RIGHTS UNDER
INTERNATIONAL
LAW?**

The body of international human rights law, originating from the United Nations (UN), consists of several human rights treaties.

The following are specific legal provisions in international law that guarantee the human right to adequate housing, and thereby provide protection against forced evictions:

1. Convention Relating to the Status of Refugees (1951)⁵³

Article 21: 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.

2. International Convention on the Elimination of All Forms of Racial Discrimination (1965)⁵⁴

Article 5: (...) to prohibit and eliminate racial discrimination in all of 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 ... (e) ... (iii) the right to housing.

3. International Covenant on Economic, Social and Cultural Rights (1966)⁵⁵

Article 11.1: 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 cooperation based on free consent.

53 International Convention Related to the Status of Refugees, July 1951. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

54 International Convention on the Elimination of All Forms of Racial Discrimination, December 1965. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

55 International Covenant on Economic, Social and Cultural Rights, December 1966. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

4. International Covenant on Civil and Political Rights (1966)⁵⁶

- Article 17:
1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.
 2. Everyone has the right to the protection of the law against such interference or attacks.

5. Convention on the Elimination of All Forms of Discrimination against Women (1979)⁵⁷

- Article 14.2:
- States Parties shall undertake 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.

6. Convention on the Rights of the Child (1989)⁵⁸

- Article 16.1:
- No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

- Article 27.3:
- 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 the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

⁵⁶ International Covenant on Civil and Political Rights, December 1966. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

⁵⁷ Convention on the Elimination of All Forms of Discrimination against Women, December 1979. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

⁵⁸ Convention on the Rights of the Child, November 1989. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)⁵⁹

Article 43 (1) (d): 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.

8. Convention on the Rights of Persons with Disabilities (2007)⁶⁰

Article 5.3: In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

Article 9.1 (a): To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, (...). These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: ... (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces.

Article 19 (a): States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that: (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement.

Article 22.1: No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary

59 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, December 1990. Available at: <http://www.ohchr.org/Documents/ProfessionalInterest/cmw.pdf>

60 Convention on the Rights of Persons with Disabilities, January 2007. Available at: http://www.ohchr.org/Documents/HRBodies/CRPD/CRPD_ENG.pdf

or unlawful interference with his or her privacy, family, or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

Article 28.1: States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

Article 28.2 (d): States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: ... (d) To ensure access by persons with disabilities to public housing programmes.

Several UN conventions, declarations, guidelines, and outcome documents of international conferences also contain provisions that protect the human rights to adequate housing, land and property. These include:

- ➔ International Labour Organization (ILO) Convention No. 110 Concerning Conditions of Employment of Plantation Workers (1958);
- ➔ Declaration of the Rights of the Child (1959);
- ➔ International Labour Organization (ILO) Recommendation No. 115 on Worker's Housing (1961);
- ➔ International Labour Organization (ILO) Convention No. 117 Concerning Basic Aims and Standards of Social Policy (1962);
- ➔ Declaration on Social Progress and Development (1969);
- ➔ Vancouver Declaration on Human Settlements (1976);
- ➔ International Labour Organization (ILO) Convention No. 161 Concerning Occupational Health Services (1985);
- ➔ Declaration on the Right to Development (1986);

- International Labour Organization (ILO) Convention No. 169 Concerning Indigenous and Tribal Peoples In Independent Countries (1989);
- Rio Declaration on Environment and Development, and Agenda 21 (1992);
- Vienna Declaration and Programme of Action (1993);
- Beijing Declaration and Platform for Action (1995);
- Istanbul Declaration on Human Settlements (1996);
- Guiding Principles on Internal Displacement (1998);
- Johannesburg Declaration and Plan of Implementation of the World Summit on Sustainable Development (2002);
- Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005);
- Basic Principles and Guidelines on Development-based Evictions and Displacement (2007);
- Declaration on the Rights of Indigenous Peoples (2007); and,
- The Future We Want – Outcome Document of the UN Conference on Sustainable Development (2012).

The following is a list of international human rights treaties ratified by India:

- International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ratified by India on 3 December 1968);
- International Covenant on Economic, Social and Cultural Rights 1966 (ratified by India on 10 April 1979);
- International Covenant on Civil and Political Rights 1966 (ratified by India on 10 April 1979);
- Convention on the Rights of the Child 1989 (ratified by India on 11 December 1992);
- Convention on the Elimination of All Forms of Discrimination against Women 1979 (ratified by India on 9 July 1993); and,
- Convention on the Rights of Persons with Disabilities 2007 (ratified by India on 1 October 2007).

By ratifying an international treaty, the Government of India is legally bound by the provisions of the treaty, including the obligation to implement it in its entirety within the

country. Ratification also creates a commitment of the Indian government to report regularly to the UN treaty body responsible for monitoring the implementation of the treaty.

Article 51 (c) of the Constitution of India calls for the state to:

Foster respect for international law and treaty obligations in the dealings of organized people with one another.

Several judgements of the Supreme Court of India have reiterated the government's international legal obligations and reaffirmed the importance of the applicability of international law in India, especially for the protection and realisation of human rights.⁶¹

In the case, *Kapila Hingorani vs. State of Bihar*,⁶² the Supreme Court highlighted the importance of respecting international law while interpreting the Constitution and domestic law:

24. The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and the meaning given to the above words in those Declarations and Covenants have to be such as would help in effective implementation of those rights. The applicability of the Universal Declaration of Human Rights and the principles thereof may have to be read, if need be, into the domestic jurisprudence.

The Government of India, in its pledge related to India's membership at the UN Human Rights Council (sent to the President of the UN General Assembly in February 2011),⁶³ also affirmed that:

4. (...) the Supreme Court's far-reaching judgment in the *Vishakha v. State of Rajasthan* (1997) case, in which the Court ruled that the provisions of international human rights instruments to which India is a Party may be read into the fundamental rights guaranteed in the Indian Constitution, even in the absence of relevant enabling domestic legislation.

The Government of India is thus legally bound by provisions of international human rights treaties that it has ratified.

61 Judgements of the Supreme Court of India that reaffirm the need to uphold international law and India's treaty obligations include: *Madhu Kishwar vs. State of Bihar* [[1996] 5 SCC 125]; *Gramophone Co. of India vs. B.B. Pandey* [[1984] 2 SCC 534], *PUCL vs. Union of India* [[1997] 3 SCC 433], and *CERC vs. Union of India* [[1995] 3 SCC 42].

62 [2003] 6 SCC 1.

63 United Nations General Assembly, Document No. A/65/758, 25 February 2011.



HOW TO RESPOND TO FORCED EVICTIONS

SECTION VI

**IN CASE OF A FORCED
EVICTION: WHAT ARE
THE INTERNATIONAL
GUIDELINES
THAT SHOULD BE
FOLLOWED?**

In addition to international and national human rights laws and policies, specific human rights standards and guidelines need to be implemented in order to ensure that human rights of the affected population are protected. The United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement⁶⁴ (hereafter UN Guidelines), presented by the UN Special Rapporteur on adequate housing and acknowledged by the UN Human Rights Council in 2007, contain several useful provisions that aim to protect human rights. In particular, the UN Guidelines:

- Seek to minimise evictions and displacement by seeking alternatives;
- Specify that evictions can only take place in ‘exceptional circumstances’ for the protection of the health and well-being of residents; and,
- In cases of ‘exceptional circumstances,’ lay down operational procedures to be followed by both state and non-state actors at each stage of the eviction process: before, during and after, in compliance with international human rights standards.

The UN Guidelines emphatically state that evictions may only take place in ‘exceptional circumstances’ for the general welfare. They must be authorized by law, take place in accordance with international human rights standards, must be reasonable and proportional, and must ensure full and fair compensation and rehabilitation.

The UN Guidelines (paragraphs 13 - 20) elaborate on basic human rights principles. They affirm that everyone is entitled to the human right to adequate housing, which includes the rights to protection against arbitrary or unlawful interference with privacy, family, home, and to legal security of tenure. The UN Guidelines further assert that:

- States must ensure that protection against forced evictions and the human right to adequate housing and secure tenure, are guaranteed without discrimination of any kind on the basis of race, colour, sex, language, religion or belief, birth or other status;
- States must ensure the equal right of women and men in protection from forced evictions; and,

⁶⁴ Presented in the report of the UN Special Rapporteur on Adequate Housing, Miloon Kothari, A/HRC/4/18, February 2007. Available at:

http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf

For translations of the UN Guidelines in Indian languages, including Hindi, Telugu, Bengali, Urdu, Gujarati, Oriya and Kannada, please see: <http://www.hic-sarp.org/translations.html>

Also see, ‘How to Deal with Projects that Involve Forced Evictions and Displacement?’ prepared by the UN Special Rapporteur on adequate housing, Raquel Rolnik. Available at: http://direitoamoradia.org/wp-content/uploads/2012/01/guide_forced_eviction_english_pgs_duplas.pdf

- All persons, groups and communities have the right to resettlement, which includes the right to alternative land and housing that must satisfy the criteria of adequacy, which is: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.

The UN Guidelines then lay down operational procedures, based on human rights standards, to be followed at each stage of an eviction: before, during and after.

1. Before Evictions (Paragraphs 37 - 44)

Before any proposed eviction, the government (and other involved actors) must:

- Explore fully all possible alternatives to eviction.
- Hold effective consultations and / or public hearings with affected persons, including women and vulnerable and marginalised groups, for an opportunity to review, comment and / or object to the eviction decision and present alternative proposals.
- Carry out comprehensive and holistic 'eviction impact assessments' to assess the potential costs and losses (material and non-material) of the proposed eviction. Impact assessments must take into account the differential impacts of forced evictions on women, children, older persons and marginalised sections of society. They should be based on the collection of disaggregated data.
- Demonstrate that the eviction is unavoidable.
- Issue notice, in writing and in the local language, to all potentially affected persons of the exact date of the eviction, a detailed justification for the decision, and plans for resettlement.
- Ensure that no one is rendered homeless or vulnerable to the violation of other human rights.
- Take appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land is provided, as close as possible to the original place of residence and source of livelihood of those evicted.
- Ensure that all resettlement measures are taken and are consistent with these guidelines and internationally recognised human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling.

2. During Evictions (Paragraphs 45 - 51)

During an eviction, the government (and other authorities responsible for the eviction) must:

- Ensure the presence of government officials / representatives and / or neutral observers at the eviction site.
- Ensure that evictions do not take place in inclement weather, at night, during religious holidays or festivals, prior to elections, and during or before school / college examinations.
- Take steps to ensure that women are not subjected to gender-based discrimination and violence, and that rights of children are protected.
- Ensure that no one is subjected to attacks or other acts of violence, or arbitrarily deprived of property or possessions.
- Respect principles of necessity and proportionality when adopting legal use of force.
- Ensure that evicted persons are not forced to demolish their own dwellings or other structures.

3. After Evictions (Paragraphs 52 - 58)

After evictions, the government (and other authorities responsible for the eviction) must:

- Immediately provide just compensation and sufficient alternative accommodation or restitution.
- Immediately provide, to all evicted persons or groups: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources; and (g) education for children and childcare facilities.
- Ensure that members of the same extended family or community are not separated as a result of the eviction.
- Ensure equal participation of women in all planning processes and in the distribution of basic services and supplies.
- Provide immediate medical care and psychological assistance to all evicted persons and pay special attention to the needs of women and children.
- Ensure that the identified relocation sites fulfil the criteria for adequate

housing according to international human rights law.

- Ensure that the human rights of women, children, indigenous people and other vulnerable groups are equally protected, including their right to property ownership and access to resources.
- Guarantee the right of all affected persons to full and prior informed consent regarding relocation.
- Provide sufficient information to all affected persons relating to the concerned resettlement. Particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women and children are represented and included in this process.
- Ensure that resettlement is carried out with the full participation of affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities.
- Ensure that those affected by an eviction do not suffer detriment to their human rights.

The UN Guidelines also contain provisions for:

Monitoring, Evaluation and Follow-up (Paragraphs 69 - 70)

- States should actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long-term consequences of evictions, including forced evictions.
- Monitoring reports and findings should be made available to the public and concerned international parties in order to promote the development of best practices and problem-solving experiences based on lessons learned.
- States should entrust an independent national body, such as a national human rights institution, to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law.

Role and Responsibility of Non-state Actors (Paragraph 73)

- Transnational corporations and other business enterprises must respect the human right to adequate housing, including the prohibition on forced evictions, within their respective spheres of activity and influence.

Protection of Children's Rights

The UN Guidelines, in several provisions (paragraphs 21, 31, 33, 47, 50, 52, 54, 56) protect children's rights. In particular they:

- ➔ Aim to prevent the violation of children's right to adequate housing and protect children from forced evictions;
- ➔ State that 'eviction impact assessments' must take into account the disproportionate impacts of forced evictions;
- ➔ Insist that children are not subject to any violence during evictions;
- ➔ Stipulate that forced evictions cannot be carried out during or prior to school examinations;
- ➔ Call for priority of housing and land allocation to disadvantaged groups, including children;
- ➔ Assert that immediate relief and relocation after an eviction must include the provision of education and childcare facilities;
- ➔ Require resettlement sites to include access to schools and childcare centres; and,
- ➔ Seek to protect children's right to health and call for special attention to be paid to children's health needs.



Protection of Women's Rights

Women's rights are also protected in several paragraphs of the UN Guidelines (paragraphs 7, 15, 26, 29, 33, 34, 38, 39, 47, 50, 53, 54 and 57).

The UN Guidelines contain provisions to ensure that:

- ➔ Women's human right to adequate housing and security of tenure is protected, and that titles to housing and land are conferred on all women;
- ➔ Women have the equal right to protection from forced evictions;
- ➔ 'Eviction impact assessments' take into account the disproportionate impacts of evictions on women;
- ➔ Women are not subject to any violence and discrimination during evictions;
- ➔ Women are joint beneficiaries, together with men, in all compensation packages;
- ➔ Women have equal and effective voice in all planning and decision-making processes in order to overcome domestic, community, institutional, administrative, legal or other gender-based prejudices;
- ➔ Women's right to health is protected and that women have access to female healthcare providers and to services such as reproductive healthcare and appropriate counseling for victims of sexual and other abuses;
- ➔ Single women and widows are entitled to their own compensation; and,
- ➔ Adequate training is carried out on women's rights, with a special emphasis on women's concerns and requirements pertaining to housing and land.

UN GUIDELINES CITED IN COURT JUDGEMENTS

The High Court of Delhi, in two judgements in 2010 (*Sudama Singh and Others vs. Government of Delhi and Anr.*, and *P.K. Koul and Ors. vs. Estate Officer and Anr. and Ors.*) has cited the UN Basic Principles and Guidelines on Development-based Evictions and Displacement, and called for their provisions to be implemented in India.



HOW TO RESPOND TO FORCED EVICTIONS

SECTION VII

**IN CASE OF A FORCED
EVICTION: WHAT
ARE THE REMEDIES
AVAILABLE?**

According to international law and guidelines, all persons affected by forced evictions have the right to timely and appropriate remedies, such as access to legal counsel, free legal aid, compensation, restitution, return, resettlement, and rehabilitation.

1. United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement

The UN Guidelines protect the right to remedy. In particular, they contain provisions for:

a) Fair and Just Compensation (Paragraphs 60 - 63)

- Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services.
- Cash compensation should under no circumstances replace real compensation in the form of land and common property resources.
- Where land has been taken, all evicted persons should be compensated with land commensurate in quality, size and value, or better.
- All those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process.
- Women and men must be co-beneficiaries of all compensation packages. Single women and widows should be entitled to their own compensation.
- To the extent not covered by assistance for relocation, the assessment of economic damage should take into consideration

losses and costs, for example, of land plots; house structure; contents; infrastructure; mortgage or other debt penalties; interim housing; bureaucratic and legal fees, lost wages, lost educational opportunities, health and medical care; resettlement and transportation costs. Where the home and land also provide a source of livelihood for the evicted inhabitants, impact and loss assessment must account for the value of business losses, livestock, equipment, trees / crops and lost / decreased wages.

b) Restitution and Return (Paragraphs 64 - 67)

- When circumstances allow, the State should prioritise restitution and return for all persons, groups, and communities subjected to forced evictions. Affected persons shall not, however, be forced against their will to return to their homes, lands or places of origin.
- When return is possible, the competent authorities should establish conditions and provide the means, including financial, for voluntary return in safety and security, and with dignity, to homes or places of habitual residence.
- Responsible authorities should facilitate the reintegration of returned persons and exert efforts to ensure the full participation of affected persons, groups and communities in the planning and management of return processes.
- Competent authorities have the duty and responsibility to assist returning persons, groups or communities to recover the property and possessions that they left behind or were dispossessed of upon their eviction. If return and recovery are not possible, competent authorities must provide appropriate compensation or other forms of just reparation.

c) Resettlement and Rehabilitation (Paragraph 68)

Resettlement must occur in a just and equitable manner and in full accordance with international human rights law.

2. United Nations 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

These Basic Principles and Guidelines were adopted by UN General Assembly Resolution 60/147⁶⁵ and are applicable in instances of forced evictions that constitute gross violations of international human rights law.

The relevant articles of the Resolution include the following:

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:
 - a) Equal and effective access to justice;
 - b) Adequate, effective and prompt reparation for harm suffered; and,
 - c) Access to relevant information concerning violations and reparation mechanisms.
12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law.
15. (...) In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law.

65 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, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations.
19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.
20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:
 - a) Physical or mental harm;
 - b) Lost opportunities, including employment, education and social benefits;
 - c) Material damages and loss of earnings, including loss of earning potential;
 - d) Moral damage;
 - e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.
21. *Rehabilitation* should include medical and psychological care as well as legal and social service.

3. Judgements of the High Court of Delhi

The High Court of Delhi, in the case *Sudama Singh and Others vs. Government of Delhi and Anr.* (2010) emphasised:

62. (iv) The State agencies will ensure that basic civic amenities, consistent with the rights to life and dignity of each of the citizens in the jhuggies, are available at the site of relocation.

In the case *P.K. Koul and Ors. vs. Estate Officer and Anr. and Ors.*, the High Court of Delhi affirmed:

232. So far as compensation is concerned, it is again well settled that the same would not be monetary alone. Principle 18 of the Guiding Principles for IDPs⁶⁶ as set out by the UN, mandates that competent authorities shall provide internally displaced persons with and ensure safe access to essential food and potable water, basic shelter and housing, appropriate clothing, essential medical services and sanitation etc. Resettlement and reintegration are an essential part of the rehabilitation of IDPs. They have the right to participate fully and equally in public affairs at all levels and are entitled to equal access to public services in the part of the country where they are resettled. Principle 29 mandates when recovery of the property and possessions which the IDPs left behind or were dispossessed of upon their displacement is not possible, they are entitled to be provided appropriate compensation or another form of ‘just reparation’.
238. Compensation to these petitioners which could be considered appropriate and perfect thus would have to include comprehensive resettlement such as economic rehabilitation and affordable housing schemes which have been clearly envisaged by the respondents. Several other measures towards meaningful rehabilitation essential in terms of the Guiding Principles have not even entered the respondents’ consideration. The same has however not been possible so far. This court cannot shut its eyes or judicial conscience or remain oblivious to the stark realities.

⁶⁶ Internally Displaced Persons.

241. (...) the respondents cannot avoid their constitutional obligation of protecting the life and liberty of the petitioners and ensuring shelter to these victims of criminal acts who stand displaced from their home for no fault of theirs, primarily on account of failure of the respondents to protect their Constitutional rights. In case rehabilitation is not possible then the respondents have no option but to ensure meaningful and reasonable resettlement in the above terms. To mitigate effects of the displacement from home, hearth and property, the respondents are thus legally obliged to provide at least reasonable shelter as part of the proportional compensation to the petitioners for violation of their basic and fundamental rights. Such 'just reparation' would constitute part of "reasonable compensation" and would be a step towards suitable rehabilitation of the petitioners.



STOP EVICTIONS CAMPAIGN
बेदखली रोको अभियान

HOW TO RESPOND TO FORCED EVICTIONS

SECTION VIII

**WHAT CAN YOU DO
TO STOP FORCED
EVICTIONS AND
SEEK JUSTICE?**

1. Conduct an 'Eviction Impact Assessment'

Housing and Land Rights Network (HLRN) has developed an 'eviction impact assessment tool'⁶⁷ that builds on the requirement in the UN Basic Principles and Guidelines on Development-based Evictions and Displacement for 'eviction impact assessments' to be conducted prior to the finalisation and sanction of any project. HLRN has developed the modalities for conducting such 'eviction impact assessments.'

The HLRN tool could be used as a mechanism to prevent evictions, and in cases where evictions have already taken place, to ensure just and adequate restitution, rehabilitation and compensation. The tool aims to assess both material (for example loss of property and household items) and non-material (for example loss of education and healthcare) costs / losses incurred during a forced eviction. The tool can be adapted to the local situation and can be used to determine the real impacts of an eviction on individuals, families, the community and society. The findings could be used for advocacy with the government, to determine compensation and to prevent evictions, and could also be used in court to support any litigation related to the eviction.

EVICTION IMPACT ASSESSMENT IN BALJEET NAGAR, DELHI

HLRN, in collaboration with partners, conducted two rounds of an 'eviction impact assessment' in Baljeet Nagar – a settlement that was demolished by the Delhi Development Authority in March 2011. Based on the findings of the first study conducted three months after the eviction (in June 2011), the average loss per household as a direct result of the demolition was around Rs. 60,000 - 70,000. These findings were also submitted to the High Court of Delhi. The second impact assessment carried out in July 2012, more than a year after the eviction, revealed that each affected family suffered an additional average loss of about Rs. 90,000.⁶⁸

67 For more details on the 'Eviction Impact Assessment Tool,' please contact HLRN at: 011-2435-8492 / hlrnsouthasia@gmail.com

68 Forthcoming report on Eviction Impact Assessment in Baljeet Nagar, Housing and Land Rights Network, New Delhi.

2. File a Writ Petition / Public Interest Litigation

A Public Interest Litigation (PIL) is a petition that can be filed by any member of the public for any matter of public interest, for redress of public wrong or injury. In cases related to forced evictions, any affected person may approach a lawyer to submit a petition in state high courts or lower courts for any injury caused as a result of such evictions.

A Writ Petition may be filed by an aggrieved person(s) to seek legal remedies for violation of fundamental rights. According to the Constitution of India, the petition can be filed under Article 226 before a High Court or under Article 32 before the Supreme Court of India.

Steps to be taken for filing a Writ Petition / PIL:

- ➔ Approach a public interest lawyer or organization to file the case.
- ➔ Collect necessary documents such as title deeds, proof of residence, identity proof, notice, resettlement policy if any, and photographs of the eviction.
- ➔ List names and addresses of all aggrieved parties approaching the court.
- ➔ List names and addresses of government agencies from which relief is sought.
- ➔ List facts giving rise to violations of Fundamental Rights.
- ➔ List dates indicating the duration of stay at the site, when the eviction took place, when and if an eviction notice was provided, and other important details related to the eviction.
- ➔ Clearly mention the 'prayers' or the relief being sought from the court.

3. Document the Eviction and Resulting Violations of Human Rights

- ➔ Click photographs of the eviction / demolition.
- ➔ Film the eviction / demolition with a mobile phone / camera, if possible.

- Write a detailed report of the events related to the eviction, including the aftermath of the eviction and impacts on different groups of affected persons – women, children, minorities and others.
- Conduct fact-finding missions. Affected communities could approach an institution / organization to help conduct a fact-finding mission that would collect accurate facts, evidence and testimonies regarding the forced eviction. The aim of such a mission would be to document the violations and propose recommendations to seek justice. The report of such a fact-finding mission could then be used for advocacy purposes.
- Use the reports as evidence in court and send them to the media, civil society organizations, the National Human Rights Commission, other relevant national human rights institutions, the UN Special Rapporteur on adequate housing, and other relevant UN Special Procedures.⁶⁹

4. Organise Public Events

a) Organise public hearings / people's tribunals

A public hearing or people's tribunal could be organised at the eviction site or at another strategic venue. Independent experts such as retired judges, lawyers, human rights activists, academics and other eminent people could be invited to be part of the jury of a public hearing / people's tribunal. During the event, affected persons could testify before the jury and recount the event and human rights violations involved. The testimonies could highlight the differential impacts of the eviction on women, children, older persons, minorities, persons with disabilities and others. After the presentation of testimonies, the jury could be called upon to issue a statement. Once the final jury statement is released, the community could use it for advocacy purposes with relevant government authorities, courts and independent human rights institutions, and also disseminate it to the media.

Such events are useful in generating awareness on human rights violations related to forced evictions; in documenting facts through testimonies from affected persons; in obtaining independent opinions and recommendations of experts; and in creating pressure on the state to take preventive and remedial action.

⁶⁹ See Section IX of this publication for more details on actors to engage with.

PUBLIC HEARING IN BALJEET NAGAR, DELHI

On 18 April 2011, a coalition of organizations in Delhi organised a public hearing on the forced eviction that took place in Baljeet Nagar on 23 and 24 March 2011. The public hearing was held at the site of demolition and several affected residents, including women and children, testified before an eminent jury that was chaired by Justice A.P. Shah (former Chief Justice of the High Court of Delhi). The jury strongly condemned the eviction and the resulting violations of human rights as well as the failure of the government to follow due process. The report of the public hearing was also submitted to the High Court of Delhi.⁷⁰



b) Organise a rally or event at a government office / public location

The affected community, in collaboration with human rights organizations and activists, could organise a public rally or an event / action outside the office of the responsible government official/s or at a public location. Participants could hold banners or placards highlighting the major issues related to the forced eviction and their demands. The media could be invited to the event. During or after the event, the affected community and its support organizations could submit a letter to the government stating violations of laws and human rights, and their demands.

70 See, *The Cruel Side of Delhi's Beautification: Illegal Demolition in Baljeet Nagar*, Report of a Public Hearing, June 2011. Available at: http://www.hic-sarp.org/documents/Baljeet_Nagar_Delhi_public%20hearing%20report.pdf



c) Organise temporary road blocks

An effective and simple strategy to generate public awareness on the issue is to block traffic at a particular junction or road for a few minutes. During this time, fliers or pamphlets on the eviction and its impacts could be distributed to the public, including those in vehicles. This would help spread information on the eviction and related human rights violations, and could be used to create indirect pressure on the government to meet demands of affected persons.

d) Observe a local or national (if possible) day of protest

Human rights organizations and activists could organise solidarity events – locally or nationally – to generate support for the affected community and to raise media awareness. A specific day could be selected for the solidarity action and information on the event could be publicised in advance. During the day of action, members of the public could be urged to carry placards or wear badges or sign letters to express their support for the affected community, to demonstrate their resistance, and to register their dissent over government action and / or inaction.

e) Organise street plays and music events

These could be held at sites where communities face eviction threats as well as in schools, colleges and public spaces, to spread awareness on the human right to adequate housing as well as on human rights violations resulting from a forced eviction. The street plays could link the right to life with other human rights and demonstrate adverse effects of forced evictions and involuntary displacement on the human rights to adequate housing, work / livelihood, education, health, environment, food, water,

and security of the person and home. Music, including songs in local languages, could also be used to spread awareness on human rights violations and the need to prevent forced evictions.

5. Issue Urgent Actions / Organise Communication Campaigns

- ➔ Write and send letters, e-mails and faxes to central and state government ministries and relevant government agencies / officials to take urgent action against the forced eviction, to stop and prevent human rights violations, and to provide justice.⁷¹
- ➔ Contact human rights coalitions and networks in the country and abroad⁷² to pressure the central and state government to take immediate action at the local level to ensure access to remedy for the affected persons / communities.
- ➔ Communicate with elected representatives to intervene to stop evictions, and provide adequate compensation, resettlement and rehabilitation.
 - Lobby with Members of Parliament (MPs) or Members of State Legislative Assemblies (MLAs) to intervene in demolitions / forced evictions, and ask them to raise pertinent questions on housing and eviction issues in the Parliament or State Legislative Assembly.
 - Send information on the eviction, including on applicable laws, policies and standards, and their violations, to elected representatives.
 - Request a meeting with local government representatives as well as central government officials, where possible, to discuss the eviction and options for remedy from the state.
- ➔ Initiate a petition or send an online letter / statement to an extensive mailing list explaining the issue and requested action from the state, and encourage people to circulate and endorse the letter / statement.⁷³

71 For information on how to issue an Urgent Action, see, *Urgent Action: HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing*, Housing and Land Rights Network, 2003. Available at: <http://www.hic-sarp.org/Urgent%20Actions%20Methodology.pdf>

72 See Section IX of this publication for a list of some organizations and networks working on issues of housing and forced evictions.

73 For example, see a letter submitted to the Prime Minister of India on the POSCO project in Odisha. Available at: http://www.hic-sarp.org/documents/Letter_for_PM_11_Feb_2013_with_endorsements.pdf

LETTER WRITING CAMPAIGN IN CHENNAI

In 2009, around 300 children from a settlement in Chetpet, Chennai, signed a letter to the then Chief Minister, Mr. Karunanidhi, addressing him as “Kalaingar Thatha” (Dear Grandfather). They requested him to stop the demolition of their houses in the middle of the academic year. As a result of this action, residents in Appaswamy Street, Chetpet managed to get a stay order from the High Court of Madras to stop the evictions.

- ➔ Send postcards to relevant authorities expressing major concerns and demands. In December 2012, about 180 students from government and Municipal Corporation of Delhi (MCD) schools in Shahabad Dairy, West Delhi, sent postcards to the Chief Justice of the High Court of Delhi to draw attention to the lack of basic amenities and poor quality of education in their schools.

6. File a 'Right to Information' Application to Seek Information on the Eviction and Resettlement Process

Under the Right to Information (RTI) Act, 2005⁷⁴ any Indian citizen can request information from a government office, department or official. The Act mandates the timely provision of information to all citizens.

The Act empowers applicant citizens to:

- Ask questions or seek any information;
- Obtain copies of permissible governmental documents;
- Inspect permissible governmental documents; and,
- Inspect permissible governmental works and obtain samples.

The RTI Act prescribes the following steps to seek public information:

- ➔ **Application:** Write an application specifying the particulars of the

⁷⁴ For more information on the Right to Information Act 2005, see: <http://rti.india.gov.in/> and <http://cic.gov.in/>

information sought. This may be handwritten, typed and also sent as an e-mail. Send the application to the concerned Public Information Officer (PIO) or Assistant Public Information Officer (APIO) of the concerned public authority. In case an applicant has difficulty in writing the application, she / he can verbally request the PIO or the APIO who is duty bound to put the request in writing.

- **Language:** The application may be written in English, Hindi or the official language of the area.
- **Fees:** A payment of Rs 10 as application fee needs to be made along with the application. The payment could be made online or sent as demand draft, banker's cheque or Indian Postal Order or given as cash to the Accounts Officer of the department. An applicant is also required to pay an additional fee, which is the cost of providing the information, calculated and informed by the Public Information Officer (PIO).
- **Deadlines:** A reply should be provided within 30 days. In case the RTI application involves questions of life or liberty, the reply should be provided within 48 hours. For human rights abuse details from listed security / intelligence agencies, the deadline is 45 days.
- **Appeal:** An appeal may be filed if the applicant does not receive the information sought within 30 days or is aggrieved by the decision of the PIO. An appeal may be drafted on a blank paper addressed to First Appellate Authority of the department along with the copy of the original application.
- **Second appeal:** If information is not received even after the first appeal, then a second appeal may be filed with the Information Commission.

In cases of forced evictions / demolitions, the relevant government officials and departments could be asked for information regarding:

- The notice for the demolition;
- The reason for the demolition and the file noting authorising the demolition;
- The land use plan for the site of eviction;
- Details of the resettlement site and alternative housing; and,
- The policy on resettlement, including provision of tenure for housing.



HOW TO RESPOND TO FORCED EVICTIONS

SECTION IX

**WHO ARE THE
ACTORS YOU
COULD ENGAGE
WITH?**

1. Relevant Government Officials

The concerned government officials, ministries and departments should be identified and contacted in case of human rights violations resulting from a forced eviction / demolition.

CENTRAL GOVERNMENT MINISTRIES

The following central government ministries could be approached for cases related to forced evictions:

Ministry of Housing and Urban Poverty Alleviation

Nirman Bhawan, Maulana Azad Road
New Delhi – 110011
Phone: (011) 2306-1928 / 2306-1242

Ministry of Social Justice and Empowerment

Room No. 439, 'A' Wing, Shastri Bhawan, Dr. Rajendra Prasad Road
New Delhi – 110001
Phone: (011) 2307-3567

Ministry of Rural Development

Krishi Bhawan, Dr. Rajendra Prasad Road
New Delhi – 110001
Phone: (011) 2378-2373 / 2378-2327

Ministry of Women and Child Development

Room No. 750, 'A' Wing, Shastri Bhawan, Dr. Rajendra Prasad Road
New Delhi – 110001
Phone: (011) 2307-4052

Ministry of Law and Justice

Fourth Floor, 'A' Wing, Shastri Bhawan, Dr. Rajendra Prasad Road
New Delhi – 110001
Phone: (011) 2338-6615 / 2338-7557

Ministry of Urban Development

C-Wing, Nirman Bhawan, Maulana Azad Road
New Delhi – 110011
Phone: (011) 2306-3495 / 2306-1162

STATE AND LOCAL GOVERNMENT OFFICIALS

The responsible government agencies, departments and officials at the state and local level should be identified and approached with the demands of the community and human rights organizations. Efforts could also be undertaken to engage with officials on law and policy development and implementation at the local level, with the aim of preventing forced evictions.

2. National (and State) Human Rights Institutions

Several national and state human rights institutions have been created with the aim of protecting human rights and investigating human rights violations.

Affected persons are urged to identify the relevant state human rights institutions and contact them with detailed information on the eviction threat or the forced eviction, and the violations of human rights of different sections of the population. Where state institutions do not exist or are not functioning adequately, the national human rights institutions could be approached.

These consist of:

National Human Rights Commission

GPO Colony, INA Block C

New Delhi – 110001

Phone: (011) 2466-3299

E-mail: covdnhrc@nic.in / ionhrc@nic.in

www.nhrc.nic.in

National Commission for Women

4 Deen Dayal Upadhyay Marg

New Delhi – 110002

Phone: (011) 2323-7166

E-mail: ncw@nic.in

www.ncw.nic.in

National Commission for Protection of Child Rights

Fifth Floor, Chanderlok Building, 36 Janpath

New Delhi – 110001

Phone: (011) 2347-8200

E-mail: ncpcr.india@gmail.com

www.ncpcr.gov.in

National Commission for Minorities

Fifth Floor, Lok Nayak Bhavan, Khan Market

New Delhi – 110003

Phone: (011) 2461-5583

E-mail: ro-ncm@nic.in

www.ncm.nic.in

National Commission for Backward Classes

Trikoot 1, Bhikaji Cama Place

New Delhi – 110066

Phone: (011) 2618-3227

www.ncbc.nic.in

National Commission for Scheduled Castes

Fifth Floor, Lok Nayak Bhavan, Khan Market

New Delhi – 110003

Phone: (011) 2463-2298 / 2462-0435

www.ncsc.nic.in

National Commission for Scheduled Tribes

Sixth Floor, B Wing, Lok Nayak Bhawan, Khan Market

New Delhi – 110003

Phone: (011) 2469-7018

www.ncst.nic.in

3. Civil Society Organizations / Housing Rights Organizations

Affected persons and communities should try and identify organizations working on issues of housing rights and related human rights in their cities / towns / states, and approach them for assistance, if required.

Some organizations working on housing and related rights in different parts of India include the following:

New Delhi

Housing and Land Rights Network

G-18/1 Nizamuddin West, Lower Ground Floor

New Delhi – 110013

Phone: (011) 2435-8492

E-mail: hlnrsouthasia@gmail.com / info@hic-sarp.org

www.hic-sarp.org

National Forum for Housing Rights

Phone: (011) 2435-9583 / (+91) 99113-62925

E-mail: nfhrindia@gmail.com

Human Rights Law Network

576 Masjid Road, Jungpura

New Delhi – 110014

Phone: (011) 2437-4501 / 2437-9855

E-mail: contact@hrln.org

www.hrln.org

National Campaign on Dalit Human Rights

8/1 South Patel Nagar, Second Floor

New Delhi – 110008

Phone: (011) 4566-8341 / 4503-7897

E-mail: info@ncdhr.org.in

www.ncdhr.org.in

Nazdeek

1/33 Double Storey Building, Jungpura

New Delhi – 110014

Phone: (+91) 87115-55098

E-mail: info@nazdeek.org

www.nazdeek.org

ActionAid India

R-7 Hauz Khas Enclave

New Delhi – 110016

Phone: (011) 4064-0521

www.actionaid.org/india

Andhra Pradesh

Campaign on Housing and Tenurial Rights (CHATRI)

H. No. 4-6-509, Esamia Bazar, Koti
 Hyderabad – 500027
 Phone: (040) 2474-8018
 E-mail: chatri_hydr@yahoo.co.in

Association of Regional Tribal Development

1-202, Jodugullapalem, Vishalakshinagar (Post)
 Vishakapatnam – 530043
 Phone: (+91) 970-410-5886
 E-mail: vizagslums@gmail.com

Maharashtra

Youth for Unity and Voluntary Action (YUVA)

5 & 6 New Maigaon Municipal School, Dr. Ambedkar Road, Dadar (East)
 Mumbai – 400012
 Phone: (022) 2411-6393 / 2411-6394
 E-mail: yuvacentre@yuvaindia.org
 www.yuvaindia.org

Committee for the Right to Housing

PPC Chawl, Plot 341 (Near Ram Mandir), Kherwadi, Bandra East
 Mumbai – 400051
 Phone: (022) 2291-6941
 E-mail: crhmumbai@rediffmail.com

Karnataka

Slum Jagathu

771, Second Main, 23rd Cross, Laxmanrao Nagar
 Bangalore – 560047
 Phone: (+91) 948-045-2037
 E-mail: slumjagathu@gmail.com

Alternative Law Forum

122/4 Infantry Road, Bangalore – 560 001
 Phone: (080) 2286-8757
 Email: contact@altlawforum.org
 www.altlawforum.org

Peoples Union for Civil Liberties – Karnataka
'Pauline', Muller Road, Valencia
Mangalore
Phone: (+91) 90088-20186
E-mail: puclblr@gmail.com

Bihar

Nidan
304, Maurya Tower, Block C, Maurya Lok Complex
Patna – 800001
Phone: (0612) 222-0772
E-mail: nidanpatna@rediffmail.com

Madhya Pradesh

Deen Bandhu Samaj Sahyog
57-C Suryadev Nagar, CAT Road
Indore – 452009
Phone: (+91) 989-364-288
E-mail: dbss_hr@rediffmail.com

Uttar Pradesh

Vigyan Foundation
D-3191, Indira Nagar
Lucknow – 226016
Phone: (0522) 401-2879
E-mail: vigyanfoundation@gmail.com
www.vigyanfoundation.org

Laxmi
M 176, Sector 12, Pratap Vihar
Ghaziabad – 201009
Phone: (+91) 96502 00773
E-mail: laxmisanstha@gmail.com

West Bengal

Banglar Manabdhikar Suraksha Manch (MASUM)

Balaji Place (Fourth Floor), 40 A Barabagan Lane, Shibatala, Srirampur, Hooghly
Kolkata – 712203

Phone: (033) 2622-0844 / 2622-0845

E-mail: masumindia@gmail.com

Jharkhand

Adarsh Seva Sansthan

Opposite Fourth Phase, Adarsh Nagar, Sonari

Jamshedpur – 831011

Phone: (0657) 231-4098

E-mail: ases_jsr@sify.com

Tamil Nadu

Information and Resource Centre for the Deprived Urban Communities

175/12, Chennai Flats, Padi Kuppam Road

Chennai – 600040

Phone: (044) 2615-0769

Gujarat

Rehthan Adhikar Manch

Street 22, Hari Om Park, Udgam School Slope, Driving Road, Thaltej Chowkdi

Ahmedabad – 380054

Phone: (+91) 94261-73764

Janvikas

C/105, Royal Chinmay, Near Judges Bungalows, Bodakdev

Ahmedabad – 380054

Phone: (079) 2685-7745

E-mail: janvikas@janvikas.in / janvikas_ahm@vsnl.net

www.janvikas.in

Swaman / Slum Women's Federation India

28 Akash Ganga Society, Near ICICI Bank

Bharuch – 392001

Phone: (+91) 92288-51459

Assam

Society for Social Transformation and Environmental Protection

All Boro Primary Teachers Association Building, DPS Road, Katabari
Guwahati

Phone: (0361) 227-9900

E-mail: sstepghy@gmail.com

Manipur

Human Rights Alert

Kwakeithel Thiyam Leikai

Imphal – 795001

Phone: (+91) 98620-08838 / 87947-42009

E-mail: hramanipur@gmail.com

Odisha

All Odisha Roadside Vendors Association

Plot Number 212, Shastri Nagar, Unit 4

Bhubaneswar

Phone: (+91) 94381-82775

4. Media

Journalists from key newspapers should be contacted with details of the forced eviction. Media reports are helpful in the struggle for justice, especially in terms of generating awareness on the eviction and in reporting violations.

The affected persons and communities could also contact civil society organizations to help issue a press release and / or organise a press conference with the details of the eviction and violations of human rights.

While contacting local journalists should be the priority, contact information of the Delhi bureaus of some English and Hindi newspapers, television channels, newswires and international news agencies have been provided.

Contact Information of Delhi Bureaus of Major Media Organizations

English Newspapers

Deccan Herald

Phone: (011) 2371-9471

Hindustan Times

Phone: (011) 6656-1270

Indian Express

Phone: (011) 2370-2100

Mint

Phone: (011) 6656-1234

Pioneer

Phone: (011) 2375-5271

The Hindu

Phone: (011) 2371-5427

The Statesman

Phone: (011) 2371-8434

The Telegraph

Phone: (011) 2370-2170

The Times of India

Phone: (011) 2330-2000

The Tribune

Phone: (011) 2331-0045

Hindi Newspapers

Dainik Jagran

Phone: (011) 2335-9960 / 3041-3400

Hindustan

Phone: (011) 6656-1259

Jansatta

Phone: (011) 2370-2141

Nai Duniya

Phone: (011) 2371-9280

Navbharat Times

Phone: (011) 4350-5340

National Newswires

Indo-Asian News Service (IANS)

Phone: (011) 3044-8700 / 3061-7900

Press Trust of India (PTI)

Phone: (011) 2331-3196 / 2331-6355

United News of India (UNI)

Phone: (011) 2335-5869

International News Agencies

AFP – Agence France-Presse

Phone: (011) 2371-2973 / 2373-8700

Asian News International (ANI)

Phone: (011) 2618-9705

Associated Press

Phone: (011) 4366-0404 | E-mail: info@ap.org

BBC News

Phone: (011) 2335-5751

BBC News Hindi

Phone: (011) 2340-1600 | E-mail: hindi.letters@bbc.co.uk

Reuters

Phone: (011) 3044-6419 | E-mail: ts.info.india@thomsonreuters.com

Television

Aaj Tak

Phone: (0120) 480-7100

ABP News

Phone: (0120) 4070-000 / 196

CNN-IBN

Phone: (0120) 434-1818; 3987-777

NDTV

Phone: (011) 2644-6666

News X

Phone: (0120) 4236-9411

Zee News

Phone: (0120) 2511-064

5. United Nations Special Rapporteur on Adequate Housing

The United Nations (UN) has a special representative designated to work on the human right to adequate housing across the world. A detailed letter with the facts of the eviction, including the time of the eviction / demolition, nature of the eviction, number of families affected, homes destroyed, and details of any violence and destruction should be compiled in English and sent to the office of the UN Special Rapporteur on adequate housing⁷⁵ in Geneva.

UN Special Rapporteur on Adequate Housing

E-mail: srhousing@ohchr.org

6. Other UN Special Procedures

The Special Procedures of the UN Human Rights Council are independent human rights experts with mandates to report and give advice on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the United Nations human rights system and covers all human rights: civil, cultural, economic, political, and social. As of 1 October 2013, Special Procedures cover 37 thematic and 14 country mandates.⁷⁶

In addition to the UN Special Rapporteur on adequate housing, some other UN Special Rapporteurs and independent experts that could be approached, depending on the issue, the human rights violations involved, and the population affected by the eviction, include:

Special Rapporteur on extreme poverty and human rights

E-mail: srextremepoverty@ohchr.org

Special Rapporteur on the right to food

E-mail: srfood@ohchr.org

Special Rapporteur on the rights to freedom of peaceful assembly and of association

E-mail: freeassembly@ohchr.org

⁷⁵ For more information on the UN Special Rapporteur on adequate housing, see: <http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>

⁷⁶ For more information on UN Special Procedures, including on information for civil society, see: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

E-mail: srhealth@ohchr.org

Special Rapporteur on the human rights of internally displaced persons

E-mail: idp@ohchr.org

Special Rapporteur on the human right to safe drinking water and sanitation

E-mail: srwatsan@ohchr.org

Special Rapporteur on the rights of indigenous peoples

E-mail: indigenous@ohchr.org

Special Rapporteur on human rights defenders

E-mail: defenders@ohchr.org

Independent Expert on minority issues

E-mail: minorityissues@ohchr.org

How to Submit Information to UN Special Procedures, including the UN Special Rapporteur on Adequate Housing

According to the Office of the High Commissioner for Human Rights (OHCHR), in order for a complaint to be assessed, the following information is needed in English:

- Identification of the alleged victim(s).
- Identification of the alleged perpetrators of the violation (if known). Substantiated information on all the actors involved should be submitted, including non-state actors if relevant.
- Identification of the person(s) or organization(s) submitting the communication (this information will be kept confidential).
- Date, place and detailed description of the circumstances of the incident(s) or violation.

The information submitted can refer to violations that are said to have already occurred, that are ongoing or about to occur.

Other details pertaining to the specific alleged violation may be required by the relevant thematic mandates (for example, legal remedies or other measures taken to seek redress).

For all complaints and violations of human rights requesting urgent action, information can be submitted to the centralised desk for Special Procedures at the United Nations Office of the High Commissioner for Human Rights (OHCHR) by any of the following means:

Fax: +41-22-917-9006

E-mail: urgent-action@ohchr.org

Postal mail:
OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

Please specify which Special Procedure the information is addressed to in the subject line of the e-mail or fax, or on the cover of the envelope.

7. United Nations Treaty Bodies

United Nations human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. Each State party to a treaty has an obligation to take steps to ensure that everyone in the State can enjoy the rights established and protected in the treaty. The treaty bodies perform a number of functions in accordance with the provisions of the treaties that established them. These include consideration of State parties' periodic reports, consideration of individual complaints, conducting country inquiries, issuing general comments that interpret treaty provisions, and organising thematic discussions related to the treaties.⁷⁷

There are nine core human rights treaty bodies composed of independent experts of recognised competence in human rights, who are nominated and elected for fixed renewable terms of four years by State parties.

The six treaty bodies relevant for monitoring the human rights treaties ratified by India are the following:

⁷⁷ For more information on UN Treaty Bodies, see: <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

- a) **Human Rights Committee**
(monitors compliance with the International Covenant on Civil and Political Rights)
Phone: +41-22-917-9261
Fax: +41-22-917-9008
E-mail: ccpr@ohchr.org
- b) **Committee on Economic, Social and Cultural Rights**
(monitors compliance with the International Covenant on Economic, Social and Cultural Rights)
Phone: +41-22-917-9000
Fax: +41-22-917-9008
E-mail: cescr@ohchr.org
- c) **Committee on the Elimination of Racial Discrimination**
(monitors compliance with the International Convention on the Elimination of All Forms of Racial Discrimination)
Phone: +41-22-917-9757
Fax: +41-22-917-9008
E-mail: cerd@ohchr.org
- d) **Committee on the Elimination of Discrimination against Women**
(monitors compliance with the Convention on the Elimination of All Forms of Discrimination against Women)
Phone: +41-22-917-9443
Fax: +41-22-917-9008
E-mail: cedaw@ohchr.org
- e) **Committee on the Rights of the Child**
(monitors compliance with the Convention on the Rights of the Child)
Phone: +41-22-917-9141
Fax: +41-22-917-9008
E-mail: crc@ohchr.org
- f) **Committee on the Rights of Persons with Disabilities**
(monitors compliance with the Convention on the Rights of Persons with Disabilities)
Phone: +41-22-917-9703
Fax: +41-22-917-9008
E-mail: crpd@ohchr.org

8. United Nations Human Rights Council, Universal Periodic Review Mechanism

The United Nations Human Rights Council (UNHRC) – the UN’s premier inter-governmental body on human rights – initiated an important human rights review mechanism called the Universal Periodic Review (UPR) in 2008.⁷⁸ Under the UPR,⁷⁹ all 193 member states of the UN undergo a comprehensive peer review of their human rights record, every four-and-a-half years. At this review, the UNHRC conducts a human rights assessment of the member state based on the legal norms contained in the United Nations Charter, the Universal Declaration of Human Rights, human rights instruments that each state has ratified, as well as international humanitarian law and voluntary state commitments. After the peer review, the Human Rights Council presents recommendations to the member state.

India has undergone two reviews at the Human Rights Council, in 2008 and 2012.⁸⁰ After the examination of India’s human rights record in May 2012, the UNHRC proposed 169 recommendations to India. In September 2012, the Government of India agreed to adopt only 67 of these recommendations.⁸¹ The one recommendation related to housing (“Continue to implement plans adopted in the area of housing and rehabilitation”) was rejected by the Indian government. There are, however, a number of recommendations accepted by India that can be used to hold the government responsible to implement its international legal obligations on the human rights to adequate housing and land. It is also important to view the recommendations from the Human Rights Council along with those from other UN bodies such as the Committee on Economic, Social and Cultural Rights.

78 The UN General Assembly mandated the creation of the UPR mechanism when it created the Human Rights Council. General Assembly resolution, 60/251, Human Rights Council, April 2006, A/RES/60/251. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement>

79 For more information on the Universal Periodic Review mechanism, see: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>
<http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx>

80 For all documentation related to India’s UPR, including the Government of India report, stakeholders’ report, and recommendations made by the Human Rights Council, see: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/INSession13.aspx>

81 The recommendations are contained in: Report of the Working Group on the Universal Periodic Review: India, UN Human Rights Council, A/HRC/21/10, Add. 1, 17 September 2012.

UPR Recommendations to India from the UN Human Rights Council (2012) – Related to the Human Rights to Adequate Housing and Land

Adequate Living Conditions, Poverty Eradication and Socio-Economic Development

- Continue efforts to eradicate poverty and better living conditions as well as increase job opportunities.
- Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.
- Continue consolidating programmes and socio-economic measures essential to achieve poverty reduction and social exclusion to the utmost well-being of its people.
- Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of the people, especially women and children.
- Continue to strengthen its poverty alleviation strategies, as well as its child protection strategies, particularly against the exploitation of children.
- Further strengthen the efforts in poverty eradication, paying special attention to the rural population.
- Make efforts to eliminate the large gap that exists between the rich and the poor.
- Continue encouraging socio-economic development and poverty eradication.

Equality and Non-discrimination

- Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's rights.
- Redouble efforts on ensuring gender equality and take measures to prevent gender discrimination.
- Continue following-up on steps taken to eliminate discrimination against women, including through awareness-raising and continuous strengthening of the relevant legal and institutional frameworks.

- Re-examine the budgets and social laws taking into account gender issues.
- Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Schedules Tribes and Minorities are well achieved.
- Ensure better protection for persons with disabilities and the elderly.
- Continue working on the welfare of children and women.

Water and Sanitation

- Further accelerate the sanitation coverage and the access to safe and sustainable drinking water in rural areas.
- Provide every possible support and assistance to the national project for rural health to raise the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene.

National Coordination

- Further coordination among relevant national authorities and human rights institutions.

International Cooperation

- Continue cooperating with the UN and other International Organisations and share good experiences and practices with other countries in order to overcome the remaining challenges.
- Continue cooperating with Special Procedures and accept, in particular, requests for visits from Special Rapporteurs.

India's next UPR will be held in 2016. During this period, civil society organizations can track India's progress in implementing UPR recommendations made by the UNHRC and also submit a mid-term review report in 2014.⁸² They could also submit independent reports to the UNHRC, which are compiled by the OHCHR

82 See, *Tracking Implementation: A Monitoring Tool for Recommendations of the UN's Universal Periodic Review*, Working Group on Human Rights in India and the UN, August 2013. Available at: <http://wgpr.org/wp-content/uploads/2013/11/WGHR-Monitoring-Tool.pdf>

into a comprehensive ‘stakeholders’ report’ that is submitted to the Council before the country’s review.⁸³

The UPR thus presents a significant opportunity to hold governments accountable to their national and international human rights commitments.

9. International Networks and Organizations

Several international human rights organizations and networks work on the issue of forced evictions and displacement. Some of their websites contain useful resources, which can be accessed easily.

- a) **Habitat International Coalition**
www.hic-net.org
- b) **ESCR-Net**
www.escr-net.org
- c) **Witness**
www.witness.org
- d) **Amnesty International**
www.amnesty.org
- e) **International Accountability Project**
www.accountabilityproject.org
- f) **Internal Displacement Monitoring Centre**
www.internal-displacement.org
- g) **Displacement Research and Action Network**
<http://displacement.mit.edu>
- h) **Brookings Institution**
www.brookings.edu/research/topics/internal-displacement

83 For information on how to submit stakeholder reports, see:
<http://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx>
Stakeholders’ submissions should be sent to: uprsubmissions@ohchr.org.



[Stop Forced Evictions and Violation of Human Rights]

HOW TO RESPOND TO FORCED EVICTIONS

SECTION X

CONCLUSION

As demonstrated in this Handbook, the right to adequate housing is a human right guaranteed in international and national law. The Supreme Court of India, in several judgements, has upheld the right to housing as an extension of the right to life.

In the case of *Chameli Singh and Others vs. State of Uttar Pradesh* (1996), the Supreme Court declared:

Right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are the basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Conventions or under the Constitution of India cannot be exercised without these basic human rights.

The United Nations has recognised forced evictions as a gross violation of a range of human rights, in particular the human right to adequate housing.

The UN Committee on Economic, Social and Cultural Rights condemned the practice of forced evictions in India and made a specific recommendation to the Government of India in its Concluding Observations of May 2008:

71. The Committee recommends that the State party take immediate measures to effectively enforce laws and regulations prohibiting displacement and forced evictions, and ensure that persons evicted from their homes and lands be provided with adequate compensation and / or offered alternative accommodation, in accordance with the guidelines adopted by the Committee in its General Comment No. 7 on forced evictions (1997). The Committee also recommends that, prior to implementing development and urban renewal projects, sporting events and other similar activities, the State party should undertake open, participatory and meaningful consultations with affected residents and communities. In this connection, the Committee draws the attention of the State party to its General Comment No. 4 on the right to adequate housing (1991) and further requests the State party to provide information in its next periodic report on progress achieved in this regard, including disaggregated statistics relating to forced evictions.

Forced evictions in both rural and urban areas, however, are on the rise and the government has not collected any data on forced evictions in the country.

The Indian government, at both the central and state level, should take immediate measures to effectively enforce laws and regulations prohibiting forced evictions and displacement. Respective state governments should impose a moratorium on forced evictions and work instead to provide legal security of tenure and low cost / affordable housing. Where forced evictions must be carried out in 'exceptional circumstances' for the general health and well-being of the people, they must follow international human rights standards and guidelines. It is the legal responsibility of the state and central government to respect, protect and fulfil the human right to adequate housing for all residents of India.

It is hoped that this publication will help communities that have been evicted and those that are faced with the threat of eviction, to gain awareness about their rights and about possible courses of action they could take in order to seek restitution and justice. It is also hoped that through improved awareness of their human rights, existing laws, policies, standards, and available mechanisms, individuals and communities will be able to advocate for improved state accountability and realisation of their human rights.⁸⁴



84 Versions of this Handbook in Hindi, Tamil, Gujarati, and Marathi are available at: www.hic-sarp.org

ADDITIONAL RESOURCES

- United Nations Guiding Principles on Internal Displacement (1998)
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement>
- United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005)
http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf
- United Nations Declaration on the Rights of Indigenous Peoples (2007)
www.un-documents.net/a61r295.htm
- Protecting Internally Displaced Persons: A Manual for Law and Policymakers (2008)
www.brookings.edu/research/papers/2008/10/16-internal-displacement
- Large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge, Report of the UN Special Rapporteur on the right to food (2009)
http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add2_land-principles_en.pdf
- Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, American Society of International Law (2010)
www.brookings.edu/research/papers/2010/01/19-internal-displacement
- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, Food and Agriculture Organization (2012)
www.fao.org/docrep/016/i2801e/i2801e.pdf
- Human Rights Council Resolution 21/19, Promotion and protection of the human rights of peasants and other people working in rural areas (2012)
<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/174/70/PDF/G1217470.pdf?OpenElement>
- Guiding Principles on Security of Tenure, Report of the UN Special Rapporteur on adequate housing, Raquel Rolnik (March 2014)
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/191/86/PDF/G1319186.pdf?OpenElement>

Housing and Land Rights Network (HLRN) is an integral part of the Habitat International Coalition (HIC), and works for the recognition, defence, promotion, and realisation of the human rights to adequate housing and land, which involves securing a safe and secure place for all individuals and communities, especially marginalised communities, to live in peace and dignity. A particular focus of HLRN's work is on promoting and protecting the equal rights of women to housing, land, property and inheritance. HLRN aims to achieve its goals through advocacy, research, human rights education, and outreach through network-building at local, national and international levels.

Forced evictions, demolition of settlements, land grabbing and displacement are serious problems across India. Through this Handbook, HLRN aims to provide displaced communities and those threatened with eviction with the necessary information to understand laws that protect their human rights as well as possible actions they could take to seek justice and redress. The Handbook contains strategies and tools that could be used not only by affected communities but also by those working on issues of housing and land – civil society organizations, social movements, human rights defenders and independent institutions. HLRN hopes that this publication will strengthen human rights education, help prevent forced evictions and displacement, and promote the realisation of the human rights to adequate housing and land for all.

For more information or to become a member of HIC-HLRN, see: www.hic-sarp.org

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