

Acts of Commission Acts of Omission

Housing and Land Rights and the Indian State
Update April 2008

A Report to

The United Nations Committee on
Economic, Social and Cultural Rights

Co - ordinated by Housing and Land Rights
Network, Habitat International Coalition



HOUSING AND LAND RIGHTS NETWORK
HABITAT INTERNATIONAL COALITION

The Human Rights to Adequate Housing and Land in India:

Parallel Report Submitted to the Committee on Economic, Social and Cultural Rights¹

Under Consideration of Article 11.1 of the
International Covenant on Economic, Social and Cultural Rights

April 2008

Introduction

International human rights law obliges India to (1) fulfil the minimum essential level of the right to adequate housing and land, and (2) show that this realization is progressive since becoming a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). As the Committee has emphasised, neither of these obligations is mitigated by a State party's political processes, domestic legislation, scarcity of resources, or agreements with other parties.

The Indian State is thus legally obliged to recognise, promote and fulfil the human right to adequate housing for all, by both international and constitutional law. In paragraph 406 of its report to the Committee,² the Government of India has clearly reaffirmed that the, "Right to shelter is recognized as an integral part of the fundamental right to life under the Constitution of India." Judgements of the Indian Supreme Court have also upheld the right to housing, explicitly recognizing that, "Shelter for a human being is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. It therefore includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads, etc."³

Despite India's legal obligations, the reality with regard to living conditions for the majority of Indians is dismal. The present degree of violations is unacceptable and represents a flagrant breach of India's Constitutional and national legal obligations as well as commitments under the ICESCR and other international instruments.

¹ Report compiled by the Housing and Land Rights Network (HLRN) – Habitat International Coalition, in collaboration with civil society groups and social movements. See Annex I for list of endorsing organizations. A summary of this report is also included in the joint parallel report submitted to the Committee by the Peoples' Collective for Economic, Social and Cultural Rights.

² Combined second, third, fourth and fifth periodic report of India, E/C.12/IND/5, 1 March 2007.

³ *Chameli Singh v. State of Uttar Pradesh* - AIR 1996 SC 1051.

This report⁴ presents some of the key issues of concern and proposes recommendations to the Government of India as well as questions for the Committee to ask the government in its fulfilment of its international and national legal obligations.

Key Issues of Concern:

Inadequate Housing and Living Conditions in Urban and Rural Areas

Though the human right to adequate housing is an internationally and nationally guaranteed human right, the majority of India's population continues to live in inadequate and insecure housing conditions. The numbers of those living in such conditions in both urban and rural areas is rapidly rising.

Across the country, people and communities are forced to live in precarious and high density conditions, in unsafe and distressed housing in slums, on pavements, alongside railway tracks, under bridges, on embankments, in shelters made from plastic sheets, cardboard, aluminium and tin, in water pipes, on degraded lands, in areas prone to earthquakes and floods, and on denuded hillsides. Aggravating this already dire situation are the phenomena of discrimination, large "development" projects such as dams, mining, highways, slum demolitions, real estate speculation, privatisation of basic services such as water, forced land acquisition for industrial development and Special Economic Zones (SEZs), communal violence, armed and ethnic conflict. These factors, often in conjunction with one another, force many, especially those belonging to marginalised communities, the working poor, small farmers and the landless, to leave their homes and habitats and live in inadequate conditions with little or no access to civic services, thereby violating their rights to water, sanitation, food, electricity, education, and generally livelihood too. Inadequate living conditions also adversely impact the human right to health of residents.

Affordability of housing is also a major concern across urban India. In Delhi, a study by an independent group revealed that housing earmarked for low-income groups was priced so high that 80% of it was in fact occupied by the middle class.⁵ Recent moves to open up the housing market to foreign direct investment have further contributed to the rising prices of housing in urban India.

Over the last few years, discrimination against the urban and rural poor has intensified, and disturbingly, has even gained legal sanction from the judiciary in the form of anti-poor judgements.⁶

The crisis of inadequate and insecure housing and living conditions reveals an abrogation of the government's national and international obligations to promote and protect human rights. The continued prevalence of these phenomena leads to exclusion, dispossession, impoverishment, and violence.

Slums and Informal Settlements

According to Census of India 2001 data, which for the first time attempted to document India's slum population, **23.1% of India's total urban population of 286 million lives in slums**. The actual figure is estimated to be much higher since only 607 cities were included in this effort. In Lucknow, despite the fact that more than 1.2 million

⁴ Housing and Land Rights Network (HLRN) has been submitting parallel reports and updates on the status of housing and land rights in India to the Committee since 2004. The report, *Acts of Commission, Acts of Omission: Housing and Land Rights and the Indian State* (2004), is available online at: <http://www.hic-sarp.org/documents/HIC-1.pdf>

⁵ *A People's Housing Policy*, Hazards Centre, New Delhi, 2003.

⁶ For example, in the case *Almitra Patel v. Union of India* [(2000) 2 SCC 679], the Supreme Court declared that, "Rewarding an encroacher on public land with free alternate site is like giving a reward to a pickpocket" (at 570-71). Other recent judgements facilitating evictions include the case *Navniti CGHS v. Lt. Governor* (WP (C) 5697/2002) in the Delhi High Court.

people live in 787 settlements, Census 2001 stated that Lucknow was a “slum-free city.” In the last three years, the government has not rehabilitated a single evicted slum in Lucknow.

The majority of the population in India’s metros lives in slums (60% in Mumbai and 50% in Delhi according to civil society estimates). This number will increase if those living in sub-standard housing are also taken into account. Official data for Delhi⁷ shows that only 27 percent of the population lives in planned and authorised housing.

Despite the fact that the slum population is rising across the country, there is still no concerted, integrated effort to develop human rights-based policy or to provide improved housing, especially low cost housing. This indicates that a large percentage of the country’s urban population has little or no access to adequate housing and basic amenities.

Questions for the Government of India:

1. What is the level of public investment in housing for the urban and rural poor? What is the total amount allocated to housing under the national budget 2008 and under the major schemes mentioned by the Government of India in its report to the Committee? How many units of housing stock are expected to be added in the current year, and in what categories?
2. In its report to the Committee, why has the government quoted the 2002 estimate by the National Sample Survey of eight million urban households (around 40 million people) living in slums, rather than the census figure, which is approximately five times higher? Which is the figure being used by the government in planning interventions for this population? If the lower figure is being used, what is the rationale and what impact has this had on budget allocations?
3. Why are housing policies and laws not explicitly based on human rights provisions in the Constitution and India’s international commitments? Why is there no reference to the right to adequate housing in the existing and proposed laws and policies?
4. What steps is the government taking to ensure that international human rights standards, such as General Comment 7 of the Committee on Economic, Social and Cultural Rights (CESCR) and the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement*, are applied during redevelopment and upgrading of slums and informal settlements and to ensure that communities are not divided, livelihoods are not lost, and people are not denied alternate housing, as is likely to be the case in Dharavi, Mumbai?
5. What is the total amount allocated for housing-related schemes by the Ministry of Urban Development and by state governments receiving assistance under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM)? How many families are expected to benefit?
6. What was the actual expenditure during the Tenth Plan on rural housing schemes for families below the poverty line? Has there been any analysis of the reasons for the gap between allocation and expenditure on rural housing? How have the recommendations of the mid-term review of the Tenth Plan been addressed in the Eleventh Plan period?
7. When is the draft *National Urban Housing and Habitat Policy 2007* expected to be finalised and passed? What process has been followed, if any, to seek the input of civil society groups to this draft?

⁷ Government of Delhi, Delhi Economic Survey for 2002.

Recommendations to the Government of India:

1. Provide legal security of tenure to all slum dwellers.
2. Allocate a fixed percentage of the budget to public / low cost housing in order to meet the severe housing deficit, especially in large cities. This should be mandated in all city and village development plans, and should include reservation of land and earmarked funds for housing for all low-income groups.
3. Play an active role in providing, monitoring and ensuring equal access to basic services such as water, sanitation and electricity.
4. Ensure people's participation in the development of all city, town and village plans, including housing /settlement plans, as well as national housing policies and policies related to basic services such as water and sanitation.
5. The draft *National Urban Housing and Habitat Policy 2007* should be developed in close consultation with civil society and incorporate a human rights approach to housing instead of a mere "housing delivery" approach as currently stressed. The Policy must also include mechanisms for arresting real estate speculation, controlling foreign investment in the housing sector, mandating low cost housing, and monitoring the implementation of the right to adequate housing through the development of concrete indicators. It must also include a strong gender perspective with a focus on women's special concerns.

Housing Shortage

At the end of the Tenth Five Year Plan, the urban housing shortage was 24.7 million dwelling units while for the Eleventh Plan period (2007 – 2012) it is estimated to be 26.53 million.⁸ This is compounded by the fact that most of the housing shortage pertains to the Economically Weaker Sections (EWS) and Low Income Groups (LIG). The total rural housing shortage for 2007-2012 has been projected as 47.43 million, of which 90% accounts for below poverty line (BPL) families.⁹

Questions for the Government of India:

1. Are there any plans to improve and expand the existing Indira Awas Yojana (for below poverty line rural families) to other low-income groups and to develop a similar programme for urban areas?
2. With the abolition of housing schemes for the urban poor and the integration of all such schemes under the JNNURM, what steps is the government taking to ensure that benefits of urban renewal actually accrue to the urban poor, specifically in terms of improved and affordable housing and access to basic services?
3. What specific schemes has the government initiated for the urban landless population, which tends to be left out of all existing programmes?

Recommendations for the Government of India:

1. Adopt a strong human rights approach to housing that focuses on adequacy of housing and not just on the provision of houses.

⁸ Report of the Eleventh Five Year Plan Working Group on Urban Housing, Ministry of Housing and Urban Poverty Alleviation, Government of India, 2007.

⁹ Report of the Eleventh Five Year Plan Working Group on Rural Housing, Ministry of Rural Development, Government of India, 2007.

Forced Evictions and Displacement

The eviction of individuals and communities from their homes and habitat, often accompanied by violence, is a phenomenon that has reached an unprecedented scale and continues to accelerate across India. In many instances these evictions are initiated by state agencies (often in collusion with landowners, land mafia, the corporate sector, and other direct beneficiaries). Forced evictions result in the destruction of lives and livelihoods of the evicted people and directly contribute to growing homelessness and social and economic insecurity.

These evictions are sparked by urban renewal projects, sporting events, industrial development, infrastructure expansion (roads, highways, ports), large “development” projects, including dams and mining, environmental conservation projects, awarding of leases to corporations for exploitation of natural resources, and most recently, designation of large areas as tax-free Special Economic Zones (SEZs). This has resulted in the displacement of millions of families, most of who have not received financial compensation, alternate land and housing sites and livelihood opportunities.

Development-induced Displacement

In the name of “development” the state as well as private corporate actors have been acquiring land for large projects and causing both the direct and indirect displacement of communities across India. Over 84 million indigenous/tribal peoples of India, known as the Scheduled Tribes or Adivasis, continue to be disproportionate victims of such “development,” displacement and dispossession.¹⁰ Most of the Adivasis live in the thickly forested and mineral-rich regions of central India. Large deposits of natural resources like bauxite, iron ore and coal in these areas have been increasingly targeted for industrial development by the state, which seeks to promote the interests of the fast-growing Indian corporate sector while sacrificing tribal cultures and livelihoods.¹¹

The issue of displacement and its disproportionate impacts on tribal and other marginalised communities has also been raised in the Compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR) for the Universal Periodic Review of India,¹² which states (in paragraph 40) that:

According to the Special Rapporteur on the right to food around 40-50 per cent of the displaced are tribal people even though they make up only eight per cent of the population reflecting serious discrimination against tribal peoples.¹³ CERD was concerned that large-scale projects such as the construction of dams on territories primarily inhabited by tribal communities, or the Andaman Trunk Road, are carried out without seeking their prior informed consent.¹⁴ Three special procedures raised concern regarding the situation of Adivasi communities, including in the state of Chhattisgarh, due to the construction of a steel plant.

¹⁰ Joint submission by People’s Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p. 7, cited in the Summary Prepared by the Office of the High Commissioner for Human Rights, Human Rights Council, Working Group on the Universal Periodic Review, A/HRC/WG.6/1/IND/2, 25 February 2008. Available at:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A_HRC_WG6_1_IND_3_India_summary.pdf

¹¹ See Summary Prepared by the Office of the High Commissioner for Human Rights, Human Rights Council, Working Group on the Universal Periodic Review, A/HRC/WG.6/1/IND/2, 25 February 2008. Available at:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A_HRC_WG6_1_IND_3_India_summary.pdf

¹² Compilation Prepared by the Office of the High Commissioner for Human Rights, Human Rights Council, Working Group on the Universal Periodic Review, A/HRC/WG.6/1/IND/2, 25 February 2008. Available at:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A_HRC_WG6_1_IND_2_India_compilation.pdf

¹³ Report of the Special Rapporteur on the right to food, on the mission to India, 2005, E/CN.4/2006/44/Add.2, para. 11. Available online at: <http://www.righttofood.org/India%20PDF.pdf>

¹⁴ CERD, Concluding Observations, India, 2007, para. 19.

Nomadic communities, which constitute approximately 7% of India's population, continue to face marginalisation and denial of their customary rights to land. Presently, no formal government scheme exists to address the housing needs of nomadic communities.¹⁵

Special Economic Zones (SEZs) are being set up in parts of the country on rich agricultural land and in areas around metropolitan cities and major ports. A skewed pattern of regional development can be expected to result, which will be reinforced by the setting up of mineral industry-based SEZs on lands occupied by indigenous communities in Orissa and Chhattisgarh.¹⁶ Official figures show that more than 2500 square kilometres of land have been acquired, implying that more than 35,000 families have already been rendered homeless because of SEZs, many of which violate environment protection laws and have questionable developmental benefits.¹⁷ Other estimates place the total area of SEZ land in India to be over 200,000 hectares, most of which is agricultural land capable of producing almost one million tones of food grains. As more and more agricultural lands are established as SEZs, food security in India is increasingly at risk.¹⁸

The *Special Economic Zone Act 2005* does not provide for any mechanism for acquisition of land for setting up of SEZs. As a result, in most cases states have resorted to using the colonial era *Land Acquisition Act 1894* (amended in 1984). Apart from the fact that the *Land Acquisition Act*, based on the principle of eminent domain does not provide any scope for landholders to refuse to give up their lands for the so-called 'public purpose', it also does not recognise any other rights on land except for that of the titleholder. As a result, acquisition leaves out all those like tenant farmers, sharecroppers and agricultural labourers, from any form of compensation. Further, where land rights have not been regularised and are still customary in nature, the *Land Acquisition Act* only works to disenfranchise people who have been living on the land for several generations and are dependent on it for their livelihoods.¹⁹

One of the most determined opposition to SEZs has come from the farmers and residents of Raigad in coastal Maharashtra who have opposed the Maha Mumbai SEZ (MMSEZ) from the days of its inception.

The Government of Maharashtra is planning to acquire 5000 acres of land in Malad, Gorai and Uttan for an entertainment/tourism SEZ. The land will be handed over to Esselworld, a company that already runs an amusement park in Gorai, to expand their venture. Women from the fisher communities and East Indian Christians who have lived here for generations have been protesting for some time against this proposal.²⁰

In Kakinada, Andhra Pradesh, the government acquired land for an SEZ through coercive means. Peoples' refusal to give up their land was met with false charges and jail arrests. Only after the intervention of the State Human Rights Commission, were they granted bail.

Over the last few years, state collusion with corporate and other forces has resulted in violence against local communities and forceful land acquisition without adequate compensation and rehabilitation, as in the case of Nandigram in West Bengal. Documents submitted for India's Universal Periodic Review, including the OHCHR

¹⁵ *Confronting Discrimination: Nomadic Communities in Rajasthan and their Rights to Land and Adequate Housing*, Working Paper, Housing and Land Rights Network, New Delhi, 2004. Available online at:

<http://www.hic-sarp.org/documents/NomadicReport.pdf>

¹⁶ Analysis of SEZ policy and human rights impacts of SEZs in Seminar, February 2008 (special issue on SEZs available at www.seminar.org).

¹⁷ Ibid.

¹⁸ *Janadesh*, Ekta Parishad, March 2008.

¹⁹ Study on Displacement in India, forthcoming publication, Delhi Forum, New Delhi, May 2008.

²⁰ Women's Centre, Mumbai.

summary of the stakeholders' report also raise issues of the lack of transparency, and intimidation of small and marginal landowners in the process of land acquisition, with security forces and police being used to suppress people's protests.

Failed Rehabilitation: Indira Sagar Project, Narmada River²¹

The Indira Sagar dam is one of the 30 large dams in the Narmada valley and part of the Narmada Valley Development Project. As per the Detailed Project Report (DPR) of 1982, the dam will affect 255 villages. Of the affected population, around 16 % are adivasis and almost 80% of the total population practices agriculture.

The condition of those evicted from their homes and lands by the Indira Sagar Project is miserable, as many have been reduced to landlessness. A 2006 report on the socio-economic conditions of those displaced (oustees) by the Indira Sagar Project highlights the inadequacies and the failures of the Narmada Hydro Development Corporation in its duty to rehabilitate those who were made to give up their lands for the dam. The report is based on a field survey of a sample of 429 rural families displaced from Indira Sagar Pariyojana (ISP) and resettled two-four years ago in five government and six private rehabilitation sites. It was clear from their interviews that a majority of ISP oustees preferred to resettle on their own because the state failed to provide adequate resettlement sites.²²

The people of Sikkim have been protesting, including through an indefinite hunger strike, against the over two dozen proposed mega hydroelectric projects on the Teesta River, particularly in Dzongu, the holy land and exclusive reserve of the Lepcha indigenous community. The proposed hydropower projects would have a drastic effect on the social, cultural and religious well-being of the Lepchas, as well as on the fragile environment of Dzongu.²³

Struggle against POSCO, Orissa

POSCO – Pohang Steel Company – the world's fifth largest steel company based in South Korea signed a Memorandum of Understanding (MoU) with the Government of Orissa for setting up a steel plant at Paradeep with a total investment of \$12 billion (Rs. 52,000 crores). It is supposedly the largest foreign direct investment in India. According to the MoU, the project involves building of a 12 million tonnes per annum (MTPA) integrated steel plant and a captive port in the Ersama Block of Jagatsinghpur district, Orissa. The Government of Orissa will grant POSCO mining lease rights for 30 years that will ensure an adequate supply of 600 million tonnes of iron ore to POSCO. The costs of this operation for POSCO have been estimated at less than 1% of the prevailing global market price for iron ore.

4000 acres of land have been earmarked in Ersama block of Jagatsinghpur district for the purpose of setting up the steel project and associated facilities, including the port and a storage yard for coking coal by the company and the government. The land that would be required for the railway, road expansion and mines is not included in this.

The construction of the steel plant and captive port are expected to have far reaching socio-economic and environmental impacts. The proposed plant and port will adversely affect 11 villages and hamlets in three *Gram Panchayats* (village councils) in Jagatsinghpur district, namely – Dinkia, Nuagaon and Gadakujang. As per the local leadership of the movement against POSCO, more than 4000 families and a population of around 22,000 will

²¹ Study on Displacement in India, forthcoming publication, Delhi Forum, New Delhi, May 2008.

²² <http://www.narmada.org/nba-press-releases/june-2007/June16.html>

²³ For more information, see: www.savetheteesta.com/

be affected by the project. These include all those persons directly dependent on the betel vine cultivation, pisciculture, cashew nut cultivation and fishing in the Jatadhari Muhana – the proposed site of the port. As a result, there has been growing opposition to the project in the affected area as well as around the state.

Since June 2005 to date, Jagatsinghpur district in Orissa has witnessed frequent protests against the plant. The situation in Jagatsinghpur continues to be tense. The current status of the project is still not clear. Both POSCO and the government need to adopt participatory and transparent practices and ensure that the land rights and livelihoods of the local people are not violated in any enterprise.

Ongoing Violations in Vedanta's Lanjigarh Refinery and Bauxite Mining Plant, Orissa

M/S Vedanta Alumina Limited (Vedanta) is establishing a one-million-tonne per annum capacity alumina refinery project, together with a 75-megawatt coal-based captive power plant at an estimated cost of about Rs. 4,000 crores (just under USD 1 billion) in Lanjigarh, Kalahandi District, Orissa, in east India. Vedanta is also establishing an associated bauxite mining project in Niyamgiri Hills, Lanjigarh.

Amnesty International, after conducting a mission to the area in November 2006, found that the area under the mining project is home to the 8,000-strong Dongria Kond community (living in about 90 scattered settlements with a distinct cultural heritage) and also the 2,000-strong Majhi Kond communities (living in about 10 settlements mainly in the foothills). The project is likely to lead to a situation of forced eviction of local communities and will threaten their human rights to water, freedom of movement, health, housing, land and livelihood. The plan to expand the illegal refinery from 1 MTPA to 6 MTPA would require an additional 13.43 square kilometres land (to the existing 6.06 square kilometres). Another 22 square kilometres would have to be acquired for waste disposal. This would result in the displacement of an additional 300 to 400 families.

Despite a strong indictment by the Central Empowered Committee (CEC) of the Supreme Court of India,²⁴ the company has continued to proceed with its construction of the alumina refinery. In a recent interim order, the Supreme Court of India denied permission to Vedanta to mine the hills of Niyamgiri in Orissa. The apex court, however, went on to suggest that Vedanta make its Indian partner Sterlite apply for and obtain the clearance. If the Court grants mining clearance to the Company, it will be going against the strong recommendations of its own advisory body, the CEC, as well as the report by the Wildlife Institute of India.

Urban Evictions

The last few years have witnessed major shifts in land use with rampant speculation in urban and peri-urban areas for real estate development, especially for building housing for the rich, shopping malls, cinemas, hotels and other enterprises. In the absence of state intervention and control, real estate speculation continues to accelerate, making housing more and more unaffordable for the majority.

Between the years 2000 and 2006, over 100,000 families were forcibly evicted from their homes in Delhi, the majority without any resettlement provisions.²⁵ Just between January and May 2004, Delhi government authorities displaced 27,000 families from Yamuna Pushta. The city of Mumbai witnessed a similar massive eviction drive between November 2004 and March 2005, in which the state government destroyed an estimated 92,000 homes in 44 areas. Preparations for the upcoming 2010 Commonwealth Games in Delhi have already led to the eviction of over 40,000 families. A government report prepared by academics at Delhi University has recommended that Delhi's "beggars" be rounded up by a special police squad and placed in detention centres to make the streets

²⁴ 21 September, 2005.

²⁵ Estimate from Hazards Centre, New Delhi.

“cleaner.”²⁶ Many street vendors, rickshaw pullers and small shopkeepers have also faced eviction from work by way of ceiling orders, new planning norms and zoning laws.²⁷

Evictions have also increased as a consequence of the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), the Central government programme that makes aid to state governments for urban development conditional on implementation of measures for opening up and privatising land and housing markets. Though the JNNURM purports as one of its objectives, the improvement of housing for the economically weaker sections, it is premised on anti-poor prerequisites such as the abolition of the Urban Land (Ceiling and Regulation) Act, 1976. The Government of India report (para. 421) to the Committee claims that the abolition of this Act would lead to the freeing of nearly 0.2 million hectares of urban land for housing, but the land released would likely be used for real estate development as the process effectively contains no equity safeguards. In order to access JNNURM funds, the Government of Bihar abolished the Urban Land Ceiling Act (1976) in April 2006. This Act had enabled slum dwellers to occupy vacant government land. They were enrolled as voters and given ration cards that amounted to legal recognition of their housing rights. With the annulment of the Urban Land (Ceiling and Regulation) Act, all their rights have also been negated. Evictions are also being carried out under the guise of urban renewal in several Indian cities. In Mumbai, more than 200 houses were demolished at Sainath Nagar, Irla Nala, Juhu on 24 December 2007 under the Brihanmumbai storm water drains project (BRIMSTOWAD) project, which is being implemented under funding from JNNURM. The total number of families affected by evictions in the 64 cities where JNNURM is currently being implemented, is estimated by activists to be well over one million.²⁸

The formation of the Greater Hyderabad Municipal Corporation has resulted in an increase of the urban area from 175 square kilometres to 625 square kilometres. The expansion has resulted in the absorption of 54 adjoining *mandals* (revenue provinces) and 66 villages into the urban agglomeration; this is likely to result in displacement and loss of livelihoods.

Though the Government of India in its report to the Committee (in para. 468)²⁹ recognises the critical link between housing and livelihood and stresses the need for evictions to be carried out under due process, these principles are not followed in practice. People living in slums and other informal settlements have been facing demolition drives without any due process and are being relocated to city outskirts.³⁰ In the majority of cases, evictions generally result in loss of livelihood, especially since most relocation sites are situated on the outskirts of cities and do not provide adequate housing or basic services such as water, transport, electricity, and healthcare. Evictions in the absence of adequate rehabilitation most severely impact the rights of children and women. Evictions also directly increase homelessness, as the absence of rehabilitation and feasible alternate options for housing, forces many to live on the streets.

²⁶ 2010 Commonwealth Games in Delhi, Hazards Centre, New Delhi, September 2007.

²⁷ Ibid.

²⁸ Testimonies and evidence on JNNURM presented at the Independent People’s Tribunal on the World Bank, September 2007, New Delhi. Documents and reports available at www.worldbanktribunal.org

²⁹ Paragraph 468: Expounding the right to shelter in the context of urbanization the Supreme Court in a landmark case has held that eviction of even a slum dweller should be according to the fair, just and reasonable process under law as it not only results in deprivation of shelter but also would also inevitably lead to deprivation of their means of livelihood (*Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180).

³⁰ See, *Restructuring New Delhi's Urban Habitat: Building an Apartheid City? Report on the Resettlement Process of Delhi*, Housing and Land Rights Network, New Delhi, 2004. Also see, *A Fact-finding Report on the Eviction and Resettlement Process in Delhi*, Hazards Centre, New Delhi, October 2007.

Resettlement Fiasco: Bawana, Delhi

A recent study of economic and social conditions of the 3000 families forcibly evicted from Yamuna Pushta to Bawana – 50 kilometres away from the city – found that one in five men and one in three women in the age group of 18-60 are not working, despite the fact that they need to and want to work. Unemployment rates for women in Bawana are double the figures for Delhi. The study also exposes a high rate of under-employment or “hidden unemployment” – workers who are “working harder and getting less”, who are working much below their capacity and potential and who are not earning even the minimum wage. The majority of workers are engaged in the informal sector, and there is a clear stratification of occupations by religion and gender with Muslims and women being at the bottom of the scale. Women workers and women-headed households in Bawana are significantly worse off than men, with fewer opportunities and lower earnings in wage work, and poorer assets and narrower profit margins if self-employed. Women also work longer hours than men in similar occupations, since they continue to be responsible for care work in their own homes. The location of the resettlement colony on the outermost periphery of the city emerges as a major cause of the new poverty that has been created by the evictions. Significant numbers of workers continue to work in their previous occupations and travel to their old work sites, not from choice but because of the lack of work opportunities in the vicinity of the resettlement colony. Although they earn the same wage, their expenses have gone up by at least 50 percent since the move to Bawana.³¹

The continued practice of forced evictions and displacement, while violating international and constitutional law, also stands in contravention of the United Progressive Alliance (UPA) Government’s Common Minimum Programme (CMP), which provides that “*Forced eviction and demolition of slums will be stopped and while undertaking urban renewal, care will be taken to see that the urban and semi-urban poor are provided housing near their place of occupation.*”

Questions for the Government of India:

1. What measures has the government taken to check against the practice of forced evictions in the country? Despite provisions in municipal laws and the Common Minimum Programme of the central government, why are evictions without due process and adequate resettlement, on the rise?
2. What safeguards are in place to ensure protection of people’s rights in compliance with India’s obligations under Art. 11.1 of ICESCR, General Comments 4 and 7 of the Committee on Economic, Social and Cultural Rights, as well as other international human rights standards?³²
3. How many families have been evicted from government-owned land in the four metros³³ in the last five years? How many of these families have been provided with alternative housing? Can the government provide city-wise figures with sources of data?
4. Does the government have any data on the number of people evicted and the number of homes demolished in Delhi for the preparation of the Commonwealth Games, including the construction of the Commonwealth Games Village?
5. Why has the Maharashtra government not rehabilitated the 92,000 families forcefully evicted in Mumbai between 2004 and 2005? (Only 612 families were declared eligible and only 412 have been actually rehabilitated). What plans does the government have for rehabilitation, including for the allocation of land and adequate housing? What is the budgetary allocation for rehabilitation?

³¹ Menon-Sen, K and Gautam Bhan, “Swept Off The Map: Surviving Eviction and Resettlement,” Yoda Press and JAGORI, New Delhi, 2008.

³² These include the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement*. Available online at: http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf

³³ These are the cities of Mumbai, Delhi, Kolkata and Chennai.

6. Why has the Maharashtra government denied water connection to households established after 1995 in slum settlements?
7. What are the standards for adequate housing, basic services and social security in resettlement colonies? Is the government complying with international human rights standards? What are the indicators for monitoring these standards?
8. What provisions are being included in the draft *Rehabilitation and Resettlement Act 2007* and the draft *National Urban Housing and Habitat Policy 2007* to check against forced evictions and displacement?
9. What measures is the government taking to ensure that provisions under the 72nd and 73rd amendments (elected local bodies) of the Indian Constitution are protected?
10. Does the government have detailed information on the amount of land acquired by it for “public interest” purposes over the last sixty years? In what percentage of the cases have the displaced people been adequately rehabilitated? What indicators has the government developed to monitor rehabilitation of those displaced by the state (including public sector companies)?
11. As also raised in the Compilation Prepared by OHCHR for India’s Universal Periodic Review, what measures has the government taken to implement the Concluding Observation of CERD where it urged the State to fully respect and implement the right of ownership, collective or individual, of the members of tribal communities over the lands traditionally occupied by them in accordance with ILO Convention 107 on Indigenous and Tribal Populations? In addition, as also recommended by CERD, what are the adequate safeguards against the acquisition of tribal lands as included in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006) and other relevant legislation.³⁴
12. What is the status of the proposed Coastal Zone Management (CZM) Notification? Why are there differential provisions for commercial enterprises and coastal communities in accessing the coastline? What measures is the government taking to ensure that communities’ customary rights to the coast are protected?
13. Is the government challenging the anti-poor judgements of the courts that contradict India’s constitutional provisions and international human rights obligations?

Recommendations for the Government of India:

1. The government must adhere to international human rights principles and undertake evictions “only in exceptional circumstances and in full accordance with relevant provisions of international human rights and humanitarian law.”³⁵
2. All responsible agencies must undertake “**eviction impact assessments**” – including social, environmental and economic impact assessments – *before* any eviction is carried out.
3. The government should implement Concluding Observations by CERD and CEDAW related to displacement, and rights of women, dalits and tribals.
4. The proposed *Resettlement and Rehabilitation Act 2007* must be based on and be consistent with both international human rights principles and constitutional obligations. The non-negotiable principles of gender equality, non-discrimination, indivisibility of human rights and prior informed consent must be adopted. The Act must be expanded to include urban and coastal displacement. The process for finalising the Act must be participatory and consultative, especially with civil society.
5. The government should issue a White Paper on the number of people displaced and rehabilitated in India since independence.

³⁴ CERD, Concluding observations 2007, paras. 19-20. *Also see:* Compilation by Human Rights Council, Working Group on the Universal Periodic Review, First session, Geneva, 7-18 April 2008, A/HRC/WG.6/1/IND/2, 25 February 2008. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A_HRC_WG6_1_IND_2_India_compilation.pdf (para. 40).

³⁵ General Comment 7 of CESCR, and the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement*. Available online at: http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf

6. Rehabilitation must ensure that peoples' habitats and livelihoods are restored, in accordance with their needs and aspirations, and must guarantee an improved lifestyle and overall well being over what they enjoyed prior to the displacement.
7. The *Land Acquisition (Amendment) Bill 2007* should be revised or dismissed. Instead, the Land Acquisition Act, 1894, should be replaced with a new comprehensive human rights based legislation, which must, among other things, clearly specify the definition of "public purpose," incorporate democratic processes and institutions, and aim to minimize displacement.
8. Housing plans should ensure that denotified and nomadic communities who wish to settle are allotted adequate land to enable them to lead a settled life in peace and dignity. Common property resources as well as grazing lands should be made accessible to those who do not wish to give up their traditional nomadic lifestyle.
9. The *Habitual Offenders Act* should be repealed, as recommended by the National Human Rights Commission in February 2002.

Homelessness

Homelessness across India is on the rise, especially in large cities. Though the Government of India in its report (para. 398) claims that, "The country has been able to reduce the houselessness over the period of time due to the various housing programmes being implemented by both Central and State Governments," there is no data to substantiate this claim. The government has made no official attempt to document the number of homeless people in India. The Committee, in its List of Issues to the Government of India,³⁶ also raised this question. In the capital city of New Delhi alone, at any given point, civil society estimates place the number of homeless at around 100,000, of which 10,000 are women. Despite this alarming situation, the city government evicted homeless women from the Palika Hostel night shelter in 2004,³⁷ and in June 2007, closed the only existing women's shelter in the city. Currently, there is no shelter for homeless women in Delhi.³⁸

No official government schemes exist for homeless people. Even the Government of India report (in paragraph 453), admits that the "night shelter scheme for footpath dwellers was transferred to the State sector w.e.f. 01.04.2005." At the state level, however, there has been no follow up of this programme nor have any concrete measures been taken to address the causes of homelessness and to provide alternate housing for homeless people.

Questions for the Government of India:

1. What steps is the government taking to address the causes and prevalence of homelessness in India?
2. What percentage of the budget is allocated to creating and maintaining shelters for the homeless?
3. Why does the draft *National Urban Housing and Habitat Policy 2007* not include adequate measures to address homelessness and its causes?

Recommendations to the Government of India:

1. Create adequate shelters and housing provisions for all homeless people, especially homeless women.

³⁶ E/C.12/IND/Q/5, 26 May 2006.

³⁷ The issue of homeless women was raised by the UN Special Rapporteur on adequate housing in his report on women and adequate housing, E/CN.4/2005/43, 25 February 2005 (<http://www2.ohchr.org/english/issues/housing/women.htm>). He also issued a statement on the Palika Hostel evictions on 29 October 2004.

³⁸ The Housing and Land Rights Network, Aashray Adhikar Abhiyan and ActionAid issued a press release on homelessness in Delhi on 7 December 2007. Available online at: http://www.hic-sarp.org/news_show_user.php?id=111

2. Abolish outdated legislation like the *Bombay Prevention of Begging Act 1959*, and the *Bombay Vagrancy Act 1959*, and analogous laws in other states, as they effectively criminalize the poor and homeless.
3. Undertake periodic surveys and collect and make available disaggregated data on homeless people in India, including number of homeless women and children as well as the number of government-run homeless shelters across the country.

Street Children

Even though India has the largest population of street children in the world, the Government of India report to the Committee admits in paragraph 322 that, “there is no authentic data in India on street children.” The last attempt to document the number of street children in India was in 1997. Lack of adequate housing has long-term deleterious effects, including severe psychological impacts on children. Children suffer the most from forced evictions and displacement, which often result in loss of education, and in the absence of adequate rehabilitation, homelessness. Street children, in particular, face extreme conditions of violence, abuse, harsh weather conditions, injury, malnutrition, exploitation, and lack of security. Despite the existence of several programmes, the plight of street children continues to be dismal.

Questions to the Government of India:

1. What steps have been taken to track and monitor the number and situation of street children in India since 1997?
2. What measures are being taken by the government to ensure the adequate rehabilitation of street children?
3. How many shelters does the government run exclusively for street children? What are the measures to safeguard the rights of street children with special needs, such as children with disabilities, HIV/AIDS, and mental health problems?
4. What measures is the government taking to ensure that street children are included in government schemes for children such as Integrated Child Development Service (ICDS) centres?
5. What specific measures is the government taking to implement the Concluding Observations of the Committee on the Rights of the Child (2000), in particular paras. 53 and 54, which focus on housing, evictions and street children?³⁹

Recommendations for the Government of India:

1. The government must urgently address the broader structural issues that lead to forced migration of children from rural areas to cities in need of subsistence.
2. The state must create more and better equipped long-term homes to meet the special needs of street children, in particular children who are orphans and abandoned, which focus on their holistic and all round development, including education, housing, and health.

³⁹ Committee on the Rights of the Child. Concluding Observations, India, 2000.

53. In accordance with Article 27 of the Convention, the Committee recommends that the State party take appropriate measures to give effect to its commitments made at Habitat II in 1996 regarding children’s access to housing. In the light of Commission on Human Rights resolution 1993/77 on forced evictions, the Committee encourages the State party to prevent any occurrence of forced relocation, displacement and other types of involuntary population movements. The Committee recommends that resettlement procedures and programmes include registration, facilitate comprehensive family rehabilitation and ensure access to basic services.

54. The Committee is concerned at the large and increasing number of children living and/or working on the streets, who are among the most marginalised groups of children in India.

3. The government should meet its reporting commitments to the Committee on the Rights of the Child and report on steps taken to realise children's right to adequate housing in India, including implementation of Concluding Observations.

Denial of Dalits' Rights to Adequate Housing and Land

Dalits and other scheduled castes (SCs) continue to face ongoing discrimination and a direct onslaught of their human rights to adequate housing, land and livelihood. Of particular significance is the discrimination and systematic denial of Dalits' land rights, which forms the basis for realising other human rights, including the rights to food and adequate housing.

Possession of land is considered to be a status symbol within the caste hierarchy and that is why a majority of the atrocities against Dalits are linked to the distribution of land by the government in various states. Landlessness among SCs is a common feature in the Indian rural economy. The 1999-2000 NSS data illustrates that around 10 percent of SC households in India are landless as compared to 13.34 percent in 1992 and 19.10 percent in 1982. Though it is apparent that landlessness is decreasing, the rate of decrease is marginal. On the other hand, 6.15 percent of the non-SC/ST households were found to be landless in 1999-2000, as compared to 10.53 in 1992.

The non-availability of disaggregated data prevents in-depth analysis and targeted planning, which may contribute to discrimination against Dalits in the realisation of their rights to land, housing, health, education and employment.⁴⁰

A clear reflection of poverty and marginalisation amongst Dalits is that their housing and living conditions are characterized by the use of inferior building materials, high density, lack of access to civic services, and spatial segregation. Dalit settlements are generally situated outside villages, with restricted access to water sources, and public and religious spaces.

Chengara Land Struggle

Landless dalits and adivasis in the state of Kerala have been involved in a struggle for land in Chengara, Pathnamtitta district, since 4 August 2007. The movement is a fight to reclaim ownership of land that had been promised to the people by the state government but is still being controlled and used by the company Harrison Malayalam Private Ltd (HMPL). HMPL reportedly negated its lease arrangement in 1996. The responsibility of the state government, therefore, lies in restoring this land to the people, as promised. In the absence of any such action by the state, nearly 9000 families, more than 35,000 people have moved into the HMPL estate and are living in inadequate, makeshift and unsanitary conditions. The Chengara land struggle demands permanent ownership of agricultural land through transfer of ownership from the Harrison Company to the dalits and adivasis. The Sadhu Jana Vimochana Samyuktha Vedi (SJVSV), the collective that leads the struggle, has opted for land take over as a strategy for protecting their rights.

⁴⁰ Joint submission by the International Movement against All Forms of Discrimination and Racism and the Lutheran World Federation in association with the National Campaign on Dalit Human Rights and the International Dalit Solidarity Network, UPR Submission, November 2007, p. 4, *Summary Prepared by OHCHR, Human Rights Council, Working Group on the Universal Periodic Review, A/HRC/WG.6/1/IND/2*, 25 February 2008. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A_HRC_WG6_1_IND_3_India_summary.pdf

Dalits are often denied access to and are evicted from their land by dominant castes and therefore forced to live on the outskirts of villages, often on barren land.⁴¹ Violence against Dalits is also caused due to land or property disputes, with punitive action seldom taken against the perpetrators. Dalit women, in particular, face discrimination in accessing their rights to adequate housing and land.

Recommendations for the Government of India:

1. Special schemes should be implemented that prioritise reallocation of surplus, including ceiling, land to Dalits, especially landless Dalits.
2. Urgent measures need to be taken to prevent the ongoing atrocities and violence against Dalits, including Dalit women, in their struggle to gain equal access to land, housing and basic services.
3. The government should take measures to implement the Concluding Observations (March 2007) of the *Committee on the Elimination of Racial Discrimination (CERD)*. In particular:
 20. The Committee recommends that the State party ensure that Dalits, including Dalit women, have access to adequate and affordable land and that acts of violence against Dalits due to land disputes are punished under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989).

Questions to the Government of India:

1. What positive measures has the government taken to improve access of Dalits to housing and land? What indicators is the government using to assess this? In particular, what are the legal and policy measures in place to ensure redress of social inequities of land ownership amongst Dalits?
2. Of the total land area redistributed in the last ten years, what percentage of land has been allotted to landless Dalit families?
3. How many cases have been registered under the Scheduled Castes Scheduled Tribes Prevention of Atrocities Act, 1989 in the last five years? Of these, how many have resulted in perpetrators being brought to trial?

Landlessness

The issue of landlessness and failed land reform continues to negatively impact the housing and land rights of people and communities that live in rural India. Over 1.31 crore (131 million) people are landless as per figures from the Ministry of Rural Development. These families do not have even land for their own habitation. The Common Minimum Programme of the United Progressive Alliance government clearly states that, “Landless families will be endowed with land through implementation of land ceiling and land redistribution legislation. No reversal of ceiling legislation will be permitted.” Despite this, the Urban Land (Ceiling and Regulation) Act 1976 has been repealed in many states.

Land distribution in India is highly skewed. The NSS Survey of the 55th Round shows that among rural households, 5.67 percent are landless, 66.05 percent own less than one hectare of land, and 13.71 percent own land between one to two hectares. Land ownership is also directly related to poverty. There is a near inverse relationship between landholding and the poverty ratio. It is thus clear that amelioration of rural poverty is contingent on redistribution of land and provision of incentives in the form of ownership rights to farmers, including women farmers and tenants through land reforms.

⁴¹ The UN Special Rapporteur on the Right to Food in his mission to India draws attention to the prevalent discrimination against Dalits, including denial of their right to land. His report (E/CN.4/2006/44/Add.2, 20 March 2006), is available online at: <http://www.righttofood.org/India%20PDF.pdf>

While the Government of India report to the Committee mentions the phenomenon of landlessness and achievements in land redistribution, the effective implementation and benefits of land and agrarian reform in order to promote social equity are still to be witnessed in most parts of the country. This is even more critical given the crisis of farmer suicides in the country. What is needed is a much stronger political will and an effort to regularise land ownership, implement land ceiling laws, and redistribute surplus land to the poorest and most marginal communities.

Questions for the Government of India:

1. What concrete measures is the government taking to rectify the highly inequitable pattern of land distribution in India?
2. What is the legal authority of the newly constituted National Land Commission under the aegis of the Prime Minister, to make decisions and implement land reform measures across different states?
3. How much of acquired surplus ceiling land has actually been redistributed and how much of it is held up in pending legal cases? What measures is the government taking to ensure speedy resolution of land related litigation?
4. How many hectares of surplus ceiling lands have been vested and distributed to landless families in the last ten years? Of the recipient families, how many have received secure legal titles over the land?

Recommendations for the Government of India:

1. The government needs to prioritise land reform on the political agenda. Even though land is a state subject under the Indian constitution, the central government should play a greater role in its administration and regulation.
2. The National Land Commission set up by the Prime Minister should play a lead role in implementing equitable land reform measures and prioritising needs of marginal farmers and other land-dependent communities.
3. Special land courts should be set up to expedite litigation related to land.
4. Surplus ceiling land should be distributed to landless families. Secure titles, in the name of women, should be given over all redistributed land.

Discrimination and Denial of Women's Equal Rights to Adequate Housing, Land, Property and Inheritance

Despite the existence of laws that protect women's rights, women in India continue to suffer discrimination with regard to their rights to adequate housing, land, property and inheritance. The impacts of inadequate living conditions, forced evictions and homelessness are greater on women. Overcrowding and precarious housing threaten women's rights to security of the home and person, and the right to privacy, and leave them vulnerable to violence and ill-health. Violence within the home is one manifestation of women's particular vulnerability in relation to housing rights. In this context, *The Prevention of Women from Domestic Violence Act 2005* is significant and holds promise, if implemented appropriately.

In review of India's progress in fulfilling its CEDAW obligations, the Committee on the Elimination of Discrimination against Women stated that denial of inheritance rights in land result in gross exploitation of women's labour and their impoverishment.⁴²

Time-use data and agricultural census figures indicate that women perform well over 50 percent of all agricultural work in the country. Nearly 20 percent of rural households are now women-headed.⁴³ However, less than two percent of women hold titles to land and have access to independent agricultural credit. The impoverishing impact of landlessness is exacerbated by social exclusion and discrimination for Dalit women. An existing Government of India directive (issued in 1992) on joint registration of land distributed under government schemes in the name of both husband and wife is neither enforced nor monitored.

Recent amendments to legislation on Hindu women's property rights (*Hindu Succession Amendment Act, 2005*) have mandated equal inheritance rights for men and women in agricultural land and family property, including dwellings. However, these amendments do not apply to non-Hindu women. The extent to which Hindu women will be able to take advantage of these provisions in a milieu where dowry is still prevalent, remains to be seen.

Questions for the Government of India:

1. Does the government have any data on the number of states with legislation (or Government Orders/Regulations) recognising women's individual and collective rights, and on registering land/ housing/ property in the name of women or jointly?
2. What percentage of housing units distributed under government schemes in the last ten years has been registered in the joint names of husband and wife and in the names of single women? What measures have been instituted to enforce directives in this regard?
3. Have there been any attempts to monitor the implementation of the *Prevention of Domestic Violence Act 2005*, in particular the number of cases in which women have retained their right to continue living in their place of residence?
4. What percentage of redistributed surplus ceiling lands has been registered in the names of women or men and women jointly? What measures have been instituted to enforce directives in this regard?
5. What efforts has the government taken to implement the Concluding Observations of CEDAW to, *inter alia*, study the impact of mega projects on tribal and rural women and to institute safeguards against their displacement and violation of their rights as well as to ensure that surplus land given to displaced rural and tribal women is cultivable?⁴⁴

Recommendations for the Government of India:

1. The Government of India needs to adopt and promote a gender-equality approach based on principles of substantive equality and intersectionality in all national and local laws and policies, including the draft *Rehabilitation and Resettlement Act 2007* and the draft *National Housing and Habitat Policy 2007*.
2. The Government should take immediate steps to implement the **Concluding Observation 83 (2000)** of the **Committee on the Elimination of All Forms of Discrimination against Women** wherein, "it calls upon

⁴² Committee on the Elimination of Discrimination against Women, Concluding Observations: India (2000).

⁴³ National Alliance of Women (NAWO), CEDAW Shadow Report, 2006.

⁴⁴ CEDAW, Concluding comments 2007, paras. 46-47. Also raised in the OHCHR Compilation on India for the UPR, Human Rights Council, Working Group on the Universal Periodic Review.

First session, Geneva, 7-18 April 2008, A/HRC/WG.6/1/IND/2, 25 February 2008. Available at:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A_HRC_WG6_1_IND_2_India_compilation.pdf

the Government to review laws on inheritance urgently and to ensure that rural women obtain access to land and credit,” and **Concluding Observation 47 (February 2007)**: “The Committee urges the State party to study the impact of mega projects on tribal and rural women and to institute safeguards against their displacement and violation of their human rights. It also urges the State party to ensure that surplus land given to displaced rural and tribal women is cultivable. Moreover, the Committee recommends that efforts be made to ensure that tribal and rural women have individual rights to inherit and own land and property.”

3. The government should consider implementing the recommendations for state action contained in the numerous resolutions and reports of the UN on women’s rights to land, housing, property and inheritance.
4. The central government should undertake periodic surveys and provide disaggregated data on indicators related to women, housing and land.
5. The collective and individual land rights of women to adequate housing, land, natural resources, property, and inheritance should be legally recognised and promoted.

Inadequate Rehabilitation of Tsunami Survivors⁴⁵

The 2004 tsunami affected the coastal areas of Andhra Pradesh, Kerala, Tamil Nadu, Andaman and Nicobar Islands and Puducherry, affecting over 28 lakh (2.8 million) people and leading to loss of life and property.

Post-tsunami rehabilitation, however, despite the passage of three years, continues to be fraught with delays and inadequacies in restoring permanent housing and livelihoods to the survivors.

The Public Accounts Committee in its 2007-08 report on “Tsunami Relief and Rehabilitation” divulges that the affected State and Union Territory governments had diverted funds and committed other irregularities in the amount of Rs. 228.58 crores (Rs. 2.285 billion). It also mentions that the government has “failed to provide much needed relief” to the victims even after three years.

While most families have been allotted alternate housing in the state of Tamil Nadu, several families in Chennai and Thiruvallur districts, are still awaiting housing. Some of the permanent housing that has been provided, as in Thondiarpit, violates standards of adequacy in terms of size, location and design. Though the Indian Supreme Court, as mentioned in the Government of India report too, defines an adequate house (in para. 406), most of the houses constructed for the tsunami affected do not meet these criteria. In Chennai, most of the houses are located far from the city and are not connected with proper roads and transportation facilities. The three-story houses given to survivors in Thondiarpit do not cater to the specific needs of the fishing community, and do not take into account the size of families or needs of women and persons with disabilities. All families, irrespective of number of family members, have been allotted flats that have an inner plinth area of the house of just 160-170 square feet. The houses have just one room with a partition for kitchen and an attached bathroom that is just 30 square feet.

As is evident in the case of the tsunami, the impacts of natural disasters and failed rehabilitation are felt most strongly by women and children.⁴⁶

⁴⁵ Housing and Land Rights Network, New Delhi, carried out three fact-finding missions to the tsunami affected areas of Tamil Nadu and Andaman and Nicobar Islands. Reports of these fact-finding missions are available online at: <http://www.hic-sarp.org/publication.php>. The report of a *Peoples’ Tribunal on Housing Rights*, which brought to light several issues of concern of tsunami survivors, is also available at the same site.

⁴⁶ See reports on ‘women and adequate housing’ by the UN Special Rapporteur on adequate housing, (E/CN.4/2005/43, 25 February 2005 and E/CN.4/2006/118, 27 February 2006) available at: <http://www2.ohchr.org/english/issues/housing/women.htm>

Relocation of families in the middle of the academic year has resulted in an increase in dropouts from school, especially of girl children. In Okkiyum Thoraipakkam in Tamil Nadu, 43 school going children have dropped out due to the increased distance from the relocation site to the school. Two women in the same relocation site were forced to give birth on the road, as they were unable to reach the hospital on time; the hospital is more than 20 kilometres from the site. Two people have died because of delay in transporting them to hospital. There are no public health centres and Integrated Child Development Service (ICDS) centres. Though the Government of India report states that the Indira Awas Yojna is applicable to construction of houses for victims of a natural calamity, in the coastal areas of Chennai and Thiruvallur as well as in other urban mainland slums, all housing is under the aegis of the Tamil Nadu Slum Clearance Board (TNSCB) and the design, size and location of the housing is inadequate. TNSCB is also responsible for several demolition and relocation projects related to redevelopment across Chennai.

A common complaint across tsunami sites has been the lack of consultation with survivors. The discriminatory nature of rehabilitation for fishing and non-fishing communities has also been problematic. From Chennai District alone, there were 7342 people who were relocated to resettlement sites that were far from the coast and the city where their livelihood thrives. The people who were relocated were predominantly Dalits and other minorities who were considered to be non-fishing communities.

In the Andaman and Nicobar Islands, only 298 houses have been provided of the 9797 houses that the government has agreed to build. This list, however, has left out several hundred families who are still awaiting news on whether they will receive government housing or not. While the government plans to complete construction of housing by December 2008, the majority of people (9500 families) are still living in intermediate tin shelters in highly inadequate conditions.

In order for rehabilitation to be adequate, it must be grounded in human rights principles, and must especially incorporate a gender-equality approach.

Questions for the Government of India:

1. Why is it that even three years after the tsunami, thousands of families are still awaiting permanent housing in Tamil Nadu?
2. What steps is the government taking to ensure that housing is provided for those whose names are left out of the housing lists – in both Tamil Nadu and the Andaman and Nicobar Islands, including tenants?
3. Why are the majority of tsunami survivors still living in intermediate tin shelters in the Andaman and Nicobar Islands?
4. Does the government have a clear timeline as to when permanent housing will be completed for all tsunami survivors in all the affected areas?
5. How does the government justify the finding of the Public Accounts Committee (PAC) in its 2007-08 report that states and Union Territories have diverted Rs. 228.58 crores (Rs. 2.285 billion) at the cost of beneficiaries?

Recommendations for the Government of India:

1. The right to relief and rehabilitation, as well as the right to disaster prevention must be recognised as human rights, and the Government of India must take measures to ensure the adoption and implementation of human rights standards in all aspects of disaster management and post-disaster response.
2. As also requested by the Committee in its List of Issues, the government should provide detailed information on the post-tsunami rehabilitation process, including in terms of housing, education, and livelihood restoration in the affected districts in Tamil Nadu.

Plight of Internally Displaced in Gujarat

Six years after the 2002 communal violence in the state of Gujarat, in which more than 2000 people were killed, survivors continue to face discrimination in housing⁴⁷ as well as serious challenges and obstacles in securing justice.

An estimated 250,000 individuals were displaced as a direct result of the 2002 violence against the Muslim community in Gujarat. The vast majority of them has reportedly left the state or has moved to other, mostly Muslim, localities within the state. An approximate 5,000 families are still living in what are being referred to as “relief colonies” in four districts of Gujarat - Panchmahals, Sabarkantha, Dahod, Anand, and in the cities of Ahmedabad and Vadodara.⁴⁸ According to an independent survey conducted by *Citizens for Justice and Peace* for a public interest litigation⁴⁹ in the Gujarat High Court, fear and terror continues to affect rehabilitation and return of these families from the camps to their original and ancestral habitats. Reasons are varied but the single reason cited in this survey conducted in over 24,000 homes is that the affected displaced persons are threatened by the perpetrators not to return.⁵⁰

Over the last six years, these camps have become permanent places of residence for those who are too frightened to return home. Most of the survivors living in these colonies lost land, housing, cattle, agricultural implements and other means of livelihood, and have not received adequate compensation or restoration and reparation of their human rights. According to a survey by *Citizens for Justice and Peace* conducted for a Member of Parliament Delegation and also presented to the National Commission for Minorities⁵¹ on November 30 2006, all relief colonies are run and maintained by community groups and NGOs, none supported by the state. These colonies do not have basic amenities, nor are they officially recognised by the Government of Gujarat. Victim survivor groups have consistently complained to the administration and the authorities about the inadequate living conditions in camps. In Citizens Nagar, Bombay Hotel area, and Faizal Park area, the lack of potable drinking water and sanitation is making life difficult for displaced persons. In early November 2007, a 13-year old boy Riyaz died of kidney failure – attributed to high salinity in the water supply in Citizens Nagar.⁵²

In October 2006, for the first time in five years, India’s National Commission of Minorities (NCM) visited these relief colonies. The NCM’s findings contested the Government of Gujarat’s claim that all those displaced by the violence had been adequately rehabilitated.⁵³ The report also asserted that the Gujarat government had failed to provide a safe environment for these people or facilitate their return to their homes. This includes the failure to

⁴⁷ Housing and Land Rights Network conducted a fact-finding mission in 2002 that focused on the impacts of the Gujarat violence on housing. The findings are available in the report, *Rebuilding from the Ruins: Listening to the Voices from Gujarat and Restoring People’s Rights to Housing, Livelihood and Life*, New Delhi, 2002.

⁴⁸ *The Uprooted: Caught between Existence and Denial – A Document on the State of the Internally Displaced in Gujarat*, Centre for Social Justice and ANHAD, February 2007.

⁴⁹ *Citizens for Justice and Peace and Communalism Combat v/s State of Gujarat*, 3217 of 2003, ongoing in the Gujarat High Court.

⁵⁰ Gujarat 2002=2007, “Genocide’s Aftermath,” *Communalism Combat*, June 2007, Issue 13, No. 123, Part I.

⁵¹ Memorandums submitted to the All Party Members of Parliament delegation and the National Commission for Minorities on November 30, 2006 by survivors and Citizens for Justice and Peace.

⁵² Memorandum to the Collector, Dhananjay Dwevedi, by survivors and NGOs (Citizens for Justice and Peace) on November 19, 2007.

⁵³ For a summary of the National Commission of Minorities findings on its visit to Gujarat in October 2006, see: www.ncm.nic.in/pressnote.pdf. Also see, *The Uprooted: Caught between Existence and Denial – A Document on the State of the Internally Displaced in Gujarat*, Centre for Social Justice and ANHAD, February 2007.

adequately recompense those families whose houses were partially or completely destroyed during the 2002 violence.

The People's Union for Civil Liberties (PUCL) filed a Right to Food petition for survivors in the Supreme Court of India in March 2007. In the course of the hearing of this petition, Court Commissioner, NC Saxena filed a report,⁵⁴ scathing in its findings of the position and plight of Gujarat's internally displaced persons. The report states that 4,545 families comprising around 30,000 persons still live in very difficult conditions in 81 relief colonies.

The response of both the Government of Gujarat and the Government of India to the plight of the internally displaced, in particular the lack of attention or action, has been disconcerting.

Questions for the Government of India and the Government of Gujarat:

1. How does the Government of Gujarat justify the fact that six years after the 2002 communal violence, thousands of affected families are still living in relief camps in adequate living conditions without any state assistance?
2. Despite strong recommendations by the NCM and recently by the Saxena report, why has the Government not taken any concrete measures to ensure the safe return of displaced Muslims to their original homes and habitats?
3. What measures is the Government taking to improve the housing and living conditions of the internally displaced families in Gujarat? What standards/benchmarks is the Government using to monitor living conditions in resettlement colonies?

Recommendations for the Government of India:

1. The Government must act on the recommendations of the NCM, in particular, to provide a special economic package for the rehabilitation of those families living in camps; ensure that basic amenities are provided in the camps; formally recognize those displaced as a result of the violence as internally displaced persons; and to draft a policy to deal with the displacement of individuals as a result of communal as well as other types of conflict.
2. Both the Government of India and Gujarat must implement the recommendations of the Saxena report, which include, *inter alia* that:
 - Contempt of court notices are issued to the chief secretary and other officials of the government.
 - Antyodaya cards are given to all families who continue to live in relief colonies
 - Primary schools with midday meals and ICDS centres should be opened in all 81 relief colonies.
 - Public Distribution System (PDS or ration shops) should be opened in all colonies where these are not available within a distance of three kilometres.
 - Issue job cards under the National Rural Employment Guarantee Act (NREGA) to all residents of relief colonies who are desirous of these.
3. Document the number of families living in relief colonies and their living conditions, and submit periodic action taken reports describing steps to facilitate their return to their original habitats.

⁵⁴ See Annex II for a copy of the Saxena Report.

Annex I

List of Endorsing Organizations:

ActionAid International – India
Campaign for Housing and Tenurial Rights (CHATRI), *Hyderabad*
Citizens for Justice, *Mumbai and Ahmedabad*
Communalism Combat, *Mumbai*
Delhi Forum
Ekta Parishad
Environics Trust, *New Delhi*
Gender, Livelihoods and Resources Forum, *Ranchi, Jharkhand*
Ghar Bachao Ghar Banao Andolan
HAQ: Centre for Child Rights
Jagori
KHOJ Education for a Plural India, *Mumbai*
mines, minerals and People (mmP)
Muktidhara, *Rajasthan*
Muslims for Secularism and Democracy
Narmada Bachao Andolan (NBA)
National Alliance of Peoples' Movements (NAPM)
National Campaign for Dalit Human Rights (NCDHR)
National Forum of Forest People and Forest Workers (NFFPW)
People's Watch
Sabrang Communications, *Mumbai*
Saheli Adhyayan Kendra, *Sahebganj, Jharkhand*
Sathi All for Partnerships, *New Delhi*
Vigyan Foundation, *Lucknow*
Youth for Unity and Voluntary Action (YUVA)

Annex II:

In the Case: PUCL vs UOI & Ors., Writ Petition (Civil) No. 196 of 2001

March 19, 2007

**To,
The Honourable Supreme Court of India**

Subject: Non-implementation of food schemes in the relief colonies of people displaced in Gujarat by the disturbances of 2002.
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The commissioners of the Supreme Court had received disturbing information about acute food and livelihood distress of people who were internally displaced by the disturbances in Gujarat. They were informed that many families continued to live in relief colonies in very difficult conditions with acute problems of food and livelihood security. It was brought to our notice that the directions of the honourable Supreme Court of India (in CWP 196/2001) on the food and employment schemes, including the ICDS, MDMS, PDS, NREGA, Antyodaya and Annapura Yojana, NOAPS, NFBS and NMBS, were being violated.

Since we are mandated by the honourable Supreme Court to monitor all the food and employment schemes in Writ 196/2001, we subsequently wrote to the government of Gujarat requesting them to look into the matter and ensure that food schemes were implemented by the government of Gujarat as per the directions of the honourable Court in Writ 196/2001.

The Government of Gujarat responded back to us that there were no relief colonies of people displaced by violence of 2002 in Gujarat.

Shortly thereafter, the National Commission for Minorities deputed three members to visit the state from October 13 to 17, 2006, and they went to 17 relief colonies. Their report is annexed in Annexure 3. They observed the difficulties that were faced by the residents of these colonies and the non-implementation of state programmes. In relation to livelihoods and food schemes, the commission made the following observations:

“The residents were frustrated by their inability to earn their own livelihood and to support themselves in the manner to which they were accustomed. Before the violence many of these people were small self-employed traders, artisans or industrialists. The violence put an end to their means of livelihood since their old clients were unwilling to use their services. The impression the team received is that very few of them were employed in service. In the new environment, they are unable to resume their earlier professions and because of this they find it difficult to survive.”

They add, “NCM members examined the homes in several rehabilitation colonies and found evidence of abject poverty. With some exceptions, the houses contained little except for bedding and kitchen utensils. Despite these signs of poverty, the NCM found that many residents did not have ration cards. Even when ration cards were issued, most of the residents were given above the poverty line (APL) ration cards instead of below the poverty line (BPL) ration cards. This makes a big difference because BPL ration card holders are entitled to get food grains, cereals, kerosene and other basic consumer items at subsidised rates. Indeed, in several camps, especially in rural areas, the women without exception had just one major demand: they wanted BPL ration cards to be issued to them.”

The report of the NCM clearly established that the government of Gujarat had misrepresented the situation to the commissioners of the honourable court by denying the existence of these colonies. It also established prima facie evidence of the fact that the directions of the honourable Supreme Court with regard to food and employment schemes were being violated.

My colleagues further completed a full survey of the state and found similar conditions in 81 such relief colonies across the state of Gujarat. The report of this investigation (guided by senior academic, Dr. Ghanshyam Shah, and state advisor, Dr. Indira Hirway) is appended in Annexure 4. It found 4,545 families comprising around 30,000 persons still living in very difficult conditions in 81 relief colonies.

The study found that none of the colonies had been set up or assisted by the state government. Only five of the 81 colonies had government or government recognised schools, and only four served midday meals to the children. Only five had ICDS centres, of which four served supplementary nutrition to the children, and one to nursing and expectant mothers. Only three had PDS shops and only 725 out of 4,545 families were recognised as BPL although their intense poverty as internally displaced persons facing economic boycott was acute. People who had BPL cards are reluctant to apply for a transfer of the card because they fear that this may be cancelled.

It is therefore proposed that the following steps are immediately undertaken to ensure state accountability for the food and livelihood rights of its citizens who remain internally displaced nearly five years after the 2002 incidents.

1. Contempt of court notices are issued to the chief secretary and other officials of the government of Gujarat for misrepresenting facts and furnishing incomplete and inaccurate information to the commissioners appointed by the Supreme Court.
2. All families who continue to live in relief colonies must be given Antyodaya cards, as internally displaced persons who lost all their belongings, face fear and economic boycott, and are too afraid to return to their original homes.
3. Primary schools with midday meals should be opened in all 81 relief colonies immediately and in any case before the next financial year. The location of the school should be such that it is accessible not only to the residents of the camp but to the surrounding host communities, to promote integration.
4. All 81 colonies should have fully functioning ICDS centres, with the entire contingent of nutrition and health services, within two months.
5. PDS shops should be opened in all colonies where these are not available within a distance of three kilometres.
6. There should be a drive within three months to ensure that all eligible persons for NOAPS and widows pensions receive these.
7. Job cards under NREGA should be issued in all NREGA districts to all residents of relief colonies who are desirous of these.
8. The chief secretary should personally certify that all these steps have been undertaken in an affidavit to the Supreme Court within three months of the passage of the order.

(signed)

Dr NC Saxena

Commissioner of the Supreme Court