



The Human Right to Adequate Housing and Land

Miloon Kothari, Sabrina Karmali & Shivani Chaudhry

NATIONAL HUMAN RIGHTS COMMISSION

The Human Right to Adequate Housing and Land

**Miloon Kothari
Sabrina Karmali
Shivani Chaudhry**



NATIONAL HUMAN RIGHTS COMMISSION
Faridkot House, Copernicus Marg
New Delhi 110 001, India

NATIONAL HUMAN RIGHTS COMMISSION

Faridkot House, Copernicus Marg

New Delhi 110 001, India

Tel: 23383570 Fax: 23384863

E-mail: covdnhrc@nic.in

Website: www.nhrc.nic.in

© 2006, National Human Rights Commission

The views expressed by the authors in this publication
are not necessarily the views of the NHRC.

C o n t e n t s

Introduction	9
Human Right to Adequate Housing and Land	13
Human Right to Adequate Housing and Land and its Relation to other Rights	15
Legal Basis for the Human Right to Adequate Housing and Land	31
Factors Impacting the Realisation of the Human Right to Adequate Housing and Land	43
Manifest Violations of the Human Right to Adequate Housing and Land	51
• Homelessness	51
• Slums and Inadequate Settlements	53
• Forced Evictions	55
• Housing and Land Rights in Post-disaster Scenario – Tsunami	61
• Development-induced Displacement	65
• Landlessness	70
Recommendations	73
Check Your Progress	75
Annexure – I	77
Sources of the Human Right to Adequate Housing and Land in International Human Rights Law	
Annexure – II	85
Over-riding Human Rights Principles	
Annexure – III	88
Selected text of recent orders passed by the Delhi High Court and Supreme Court relating to human rights to adequate housing and land	
Annexure – IV	96
Using the UN System	
Annexure – V	98
Some Online Resources	



P r e f a c e

Dr. Justice Shivaraj V. Patil

Acting Chairperson, NHRC

For full development as human beings, exercise and enjoyment of Human Rights by all the people is necessary. Human Rights and fundamental freedoms help us to develop our intrinsic qualities, intelligence, talents and conscience to meet our material and spiritual needs. It is needless to state that without the recognition of the right to education, realization of the right to development of every human being and nation is not possible. Article 26 of the Universal Declaration of the Human Rights (1948) inter alia states that ‘education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, social or religious groups and shall further the activities of the United Nations for the maintenance of peace’. Historically, education is an instrument of development and an important factor for social change. In this view, Human Rights education is / has to be an integral part of the right to education. Of late, it is recognized as a Human Right in itself.

The knowledge of the rights and freedoms, of oneself as much as of the others, is considered as a fundamental tool to guarantee the respect of all human rights for each and every person.

On 10th December 2004, the General Assembly of the United Nations proclaimed the World Programme for Human Rights Education (2005-ongoing) to advance the implementation of human rights education programmes in all sectors. Building on the foundation laid during the United Nations Decade for Human Rights Education (1995-2004), the new initiative reflects the international community’s increasing recognition that human rights education produces far-reaching results, by promoting respect for human dignity and equality and participation in democratic decision-making.

Human Rights Education cannot merely be an intellectual exercise. It acts as a linkage between education in the classroom and developments in a society.

Study of Human Rights should be included in the curriculum or syllabus in schools and colleges making it an essential part of the learning process. India has accepted elementary education as one of the basic needs of everyone. The Constitution mandates to provide free education to all children in the age group of 6-14 years. The World Conference on 'Education for All' held in Jomtien, Thailand in 1991 pleaded universal primary education in particular on education for girls and women.

The Karnataka Women's Information and Resource Centre (KWIRC), Bangalore involved various activists, advocates and key persons associated with the movement for the rights of certain vulnerable sections of the society, for developing reference material for human rights education in universities. The dossiers prepared by the experts with commitment along with the National Human Rights Commission are presented here as reference material for university students.

The main objective of these dossiers is to inspire, motivate, cultivate curiosity, shape the opinion and enlighten the university students on issues concerning human rights.

The focus of these dossiers has been on various movements that have taken place at the grass root level rather than on individual entities. These have been written in an interactive style, rather than being narrative.

The overall content of the dossiers consists of milestones at the national and international levels, critical analysis of the situation, role of various stake holders and players, action agenda etc.

Dissemination of knowledge of human rights must aim at bringing about attitudinal change in human behaviour so that human rights for all become the spirit of the very living. The Commission hopes that the educational institutions and students pursuing human rights education and others interested in human rights will be benefited immensely by this series of books.



(Dr. Justice Shivaraj V. Patil)

24 November, 2006

A c k n o w l e d g e m e n t s

Promoting Human Rights literacy and awareness is one of the main functions of the NHRC, as per section 12(h) of the Protection of Human Rights Act, 1993. The Commission has been serving this encompassing purpose within its best means.

Since its inception, the Commission has been endeavouring to spread human right education at both school and university levels. Pursuant to Commission's efforts, the UGC introduced human rights education at the university level, which is now being imparted in over 35 Universities/Colleges across the country, besides in the National Law Schools.

It is said that the awareness of human rights is largely limited to the educated sections of society, while ideally it is necessary to create awareness about human rights at all levels. There has been a growing realization that human rights cannot be taught only from formal documents.

For the purpose of developing reference material on human rights education in Indian universities, the Commission endeavoured to request the authors along with the Karnataka Women's Information and Resource Centre, Bangalore.

Each of these dossiers that are listed below have been authored by activists and experts who are deeply involved in, or closely associated with, the relevant movement:

1. Rights of Disabled by Anuradha Mohit, Meera Pillai & Pratiti Rungta
2. The Human Rights to Housing and Land by Miloon Kothari, Sabrina Karmali and Shivani Choudhary
3. Dalit Rights by Martin Macwan
4. Rights of Home Based Workers by Shalini Sinha
5. Women's Right to Health by N. B. Sarojini and others
6. Environment and Human Rights by Ashish Kothari and Anuprita Patel
7. The New Environmentalism – The Struggle in Narmada Valley by Sanjay Sangvai.
8. Coasts, Fish Resources and Human Rights of Fish Workers by Nalini Nayak.
9. Children in India and their Rights by Dr. Savita Bhakhry

A set of nine books is now being published in the series. Two more books on 'Right to Information' and 'Gandhian struggle for Rights such as Bhoodan and Gramdhan' are intended to be published shortly.

The Commission is grateful to the authors of these dossiers.

A handwritten signature in black ink, appearing to read 'Aruna Sharma', with a stylized flourish at the end.

(Aruna Sharma)
Joint Secretary

Introduction

While access to adequate and secure housing is a basic human right, it is still denied to many of the world's poorest people. United Nations estimates indicate that approximately 100 million people worldwide are without a place to live, while over 1 billion people are inadequately housed without access to basic services.¹ If rural areas were included within these figures, the numbers could even be twice as much. These statistics are increasing at an exponential rate, particularly within the global south, where situations are already at a grave risk.

According to the Census 2001 data, 82 million of India's total urban population of 285 million lives in slums and other low-income informal settlements. This means that about 30% of the country's urban population has little or no access to adequate housing and basic amenities. The situation in rural areas is even more dismal. It can thus be estimated that around 50% of India's population lives in conditions of extreme deprivation.

Renuka, a ten-year-old girl, wakes up every morning to policemen yelling at her to move off the pavement. Often they also abuse her physically. She is one of the thousands of homeless children in Delhi, forced to live on the city's hostile streets, because she has no other place to go to. Her parents live in a village in Rajasthan, but the young girl is here with her brother, since her parents can no longer afford to feed her at home. Due to low productivity of land and rising debts, they lost their land to moneylenders. Renuka had no choice but to leave in order to survive. She is afraid of life in Delhi, especially of the police and street hoodlums. She sells newspapers at traffic lights and just about manages to buy herself one meal a day.

The UN Special Rapporteur on adequate housing has 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."²

-
1. Report of the Special Rapporteur on adequate housing, as a component of the right to an adequate standard of living, Miloon Kothari, E/CN.4/2005/48, 3 March 2005.
 2. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, E/CN.4/2006/41, 21 March 2006.

Though the majority of the world's population lives in some form of dwelling, roughly one half of the world's population does not enjoy the full spectrum of entitlements necessary for housing to be considered adequate.

The obligation of States to take steps towards the realisation of the right to adequate housing for all is laid down in a number of international legally binding human rights instruments. They include the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (Art. 11, para. 1), the Convention on the Rights of the Child (Art. 27, para. 3), and the non-discrimination provisions found in Article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and Article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination.

The Universal Declaration of Human Rights (UDHR) of 1948, clearly states under 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.”³

According to General Comment No. 4 on the right to adequate housing adopted in 1991 by the United Nations Committee on Economic, Social and Cultural Rights, in order for housing to be adequate it must provide more than just four walls and a roof over one's head; it must, at a minimum, include the following elements: legal security of tenure, availability of services, affordability, accessibility, habitability, location and cultural adequacy.

Despite international legal provisions, the human right to adequate housing is widely violated globally. Part of the problem is that many individuals across the world are not aware of their rights or do not have the means to implement them. More serious is the manner in which states are increasingly violating the rights of their citizens and abrogating their international and national legal commitments. With the global rise in slum demolitions and brutal forced evictions, spaces for the working poor are shrinking, including space for housing. Growing agrarian crises fuelled by failure of land reform measures, corporate takeover of farms, lack of farming subsidies, privatisation of basic services, development-induced displacement, and usurpation of agricultural land of small farmers is compelling large rural populations to migrate to urban areas for

3. It is now clearly established that the male-specific language of international human rights instruments is inclusive of women.

survival. The absence of low-cost housing options in urban areas forces many to live in inadequate and dire conditions with serious long-term ramifications, including on their health. The issue has taken on an alarming severity over the recent past. The structural causes of migration, including the glaring neglect of rural planning, need to be comprehensively addressed through multi-pronged strategies.

Underlying the right to adequate housing and land is the human right to life with dignity. The failure to provide adequate living conditions, including adequate housing and land and the provision of essential services, results in a violation of human dignity. The right to life with dignity is the most fundamental and non-negotiable human right and is the core for the realisation of all other human rights.

Apart from holding states accountable, one of the means to spread awareness on the human right to adequate housing and to ensure its progressive realisation is through education. If people are educated on the fundamental principles and provisions of international and national laws on housing and land rights, and understand the mechanisms and legal rights available to them, they could use these international instruments as effective tools to struggle against the perpetuation of inadequate and insecure housing conditions, while maintaining pressure on responsible agencies to meet their legally and morally binding commitments.

Dossier on the Human Right to Housing and Land

The following dossier is one such attempt at human rights education on housing and land rights. It aims to provide the reader with information on legal and other guarantees of the human right to housing and land. It first acquaints the reader with the definition of adequate housing and its importance as a universal human right. It contains international as well as national legal provisions, laws, rules and standards formulated by the United Nations that guarantee the human right to adequate housing and land. Included within this section is an explanation of the core elements of the human right to housing contained in international human rights instruments, as interpreted and monitored by the United Nations treaty bodies, including the UN Committee on Economic, Social and Cultural Rights (CESCR).

After providing the legal context for housing and land rights, the dossier discusses some of the structural and systemic factors impeding the realisation of these human rights.

The next section discusses some of the key issues regarding land and housing rights, including prevalent trends and phenomena, which manifest as violations of the human right to adequate housing and land. In order to further develop an understanding of the realities of housing and land situations, case studies have been provided to illustrate how these rights are being violated within the Indian context.

The dossier finally makes some recommendations that could be proposed to the central and state governments in order to guarantee, uphold and protect the human right to adequate housing and land. It also suggests some advocacy actions that students could initiate in an attempt to join the movement for realising the human right to adequate housing and land in India.

Human Right to Adequate Housing and Land

Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, the right to adequate housing has been recognized as an important component of the right to an adequate standard of living. Subsequently, the right to adequate housing has come to be widely recognized as a basic human right awarded to all human beings through several international instruments.

On the basis of the provisions established in the UDHR, the right to adequate housing was elaborated and reaffirmed in 1996 by the International Covenant on Economic, Social and Cultural Rights (ICESR): **“The State 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.”** (Art. 11.1).

Through General Comment 4 on “The right to adequate housing,” the Committee on Economic Social and Cultural Rights (CESCR) has given a holistic understanding to the issue of housing:

“In the committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense, which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity...While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following 7 core elements:

- Legal security of tenure, including legal protection against forced evictions
- Availability of services, materials, facilities and infrastructure
- Affordability
- Habitability
- Accessibility for disadvantaged groups
- Location

- Cultural Adequacy⁴

In 1996, the Istanbul Declaration and the Habitat Agenda⁵ reinforced the responsibilities of all governments to the provision of adequate housing, as exemplified by their creation of ministries or agencies, by their allocation of resources, and by their policies, programmes and projects. It also stated that the provision of the right to adequate housing required joint action by government organizations, communities and local authorities, as well as partner organizations and entities of the international community.

It is important to recognize that the human right to adequate housing is not

limited exclusively to a physical structure, a house. It is conceived in a much broader sense that integrates housing, shelter and habitat environment as a whole. This includes the cultural, historic, social, economic, political, and legal environment as well as physical and territorial dimensions.

Adequate shelter means more than a roof over one's head. It also means adequate privacy; adequate space; physical accessibility; adequate security; security of tenure; structural stability and durability; adequate lighting; heating and ventilation; adequate basic infrastructure, such as water supply, sanitation and waste management facilities; suitable environmental and health related factors; and adequate and accessible location with regard to work and basic facilities: all of which should be at an affordable cost...

(The Habitat Agenda, Paragraph 60, 1996)

Though the human right to land is not articulated specifically as a separate human right in international law, the human right to adequate housing has increasingly been interpreted as including the human right to land as is evident in reports of the UN Special Rapporteur on adequate housing.⁶ It is also an integral part of the human right to livelihood and food, as expounded in recent reports of the UN Special Rapporteur on the right to food.⁷ The right to land is also encompassed in the right to work as the right to access productive land. Given the indivisibility of human rights, the right to land cannot be treated in isolation, neither can it be accorded a status other than that of a human right that must be defended and upheld.

4. General Comment No. 4 'The Right to Adequate Housing' (Art. 11 (1) of the Covenant), Committee on Economic Social and Cultural Rights, 1991, Sixth session, paras. 7 and 8.

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

6. See reports of Miloon Kothari, UN Special Rapporteur on adequate housing, including his recommendations to the former Commission on Human Rights to recognize the right to land as a human right, at: http://ap.ohchr.org/documents/dpage_e.aspx?m=98

7. Report of the Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2006/44/Add.2, 20 March 2006.

Human Right to Adequate Housing and Land and its Relation to other Rights

As with all human rights, the right to adequate housing and land must be understood in the context of indivisibility of rights, which includes within it the physical and material aspect of space as well as the emotional, mental and spiritual dimensions.

The human right to adequate housing cannot be viewed in isolation. The full enjoyment of other rights, such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence, the right to information and prior informed consent, and the right to participate in public decision-making, is indispensable, if the right to adequate housing and land is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the human right to adequate housing and land.

The human right to adequate housing and land is closely and intrinsically linked to other rights guaranteed by the body of human rights instruments, which are affected when the right to housing is affected. For example, it has been recognised that conditions in the housing environment have direct consequences for enjoyment of the right to health.⁸ This link also crosses the categories of rights embodied in the two International Covenants on Economic, Social and Cultural Rights (ICESCR), and on Civil and Political Rights (ICCPR). The denial or fulfilment of the human right to information (Article 19 in ICCPR), as in specific cases related to programmes, building materials, conditions of resettlement or finance, could thus affect the right to adequate housing.⁹ Moreover, certain types of housing rights violations, such as forced evictions,⁹ could be so severe that various United Nations human rights bodies have declared the practice of forced evictions to constitute a "gross violation of human rights in particular to adequate housing." And "it is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people."¹⁰

8. Health Principles of Housing, World Health Organization, Geneva, 1989.

9. More information on forced evictions is provided in the next section.

10. E/CN.4 Sub.2/1993/8, para.21.

*“The indivisibility of survival, health, environmental conditions and housing confirms the need to view housing rights within a holistic and interdependent framework, and one which transcends the outdated ‘four walls and a roof’ view of housing.”*¹¹

Clearly, as mentioned before, the right to housing and its adequacy have internationally been construed to include not just a roof and four walls, but other elements constituting livelihood sources and survival, such as agricultural land, common property resources, natural resources for subsistence, basic civic infrastructure and facilities concerning health, education, water, food, and a clean and healthy environment. The inextricable link of the right to housing with other human rights such as right to health, right to a healthy environment, right to land and other natural resources, right to livelihood and work, right to food, right to information, right to participation, right to freedom of movement and residence, right not to be arbitrarily deprived of property, right to non-discrimination and right to gender equality, has been clearly established in the last three decades.

*“It can be argued, in fact, that the right to housing has the potential to unify the various rights (the related fields that comprise life in security, peace and dignity) revolving around the struggle for a place to live, and that the attainment of other rights becomes that much more possible once the right to a secure place to live has been gained.”*¹²

Based on the understanding of the indivisibility of human rights and based on legal sources and global experiences, the Housing and Land Rights Network¹³ has further developed the seven core elements of adequacy mentioned above from General Comment No. 4.

The following elements constitute congruent human rights conditions already recognised in binding international treaties:

- Right to life
- Right to health
- Right to a safe and healthy environment
- Right to property

11. Report of the Special Rapporteur on Adequate Housing, Justice Rajinder Sachar, appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1992, E/CN.4/Sub.2/1992/15.

12. Miloon Kothari, *The Human Right to Adequate Housing: Towards Ideal Indicators and Realistic World Views*, Geneva, 25-29 January, 1993.

13. See www.hlrn.org

- Right to gender equality/women's rights
- Right to livelihood
- Right to culture
- Right to privacy and family life
- Right to development
- Right to information
- Freedom of movement
- Freedom from torture, inhuman or degrading treatment or punishment, including freedom from violence.

The Supreme Court of India has also, in various judgements, upheld the right to housing under the ambit of the right to life, the right to live with dignity, the right to clean drinking water, and the right to livelihood.¹⁴

The clear link between the human right to food and the right to land has been made by the UN Special Rapporteur on the Right to Food, Jean Ziegler in his report on his mission to India.¹⁵ In particular he states that:

The hungry and malnourished are primarily children, women and men living in rural areas and are dependent on agriculture, working as casual workers but also as sharecroppers and tenant or marginal farmers with less than one hectare of land. Agricultural wages are very low and increasingly precarious, minimum wages not always enforced and many people lack work during the agricultural lean season. In some states, feudalistic patterns of land ownership persist, despite legal abolition and the official Land Ceilings Act that aimed to limit land concentration. In Madhya Pradesh, for example, the Special Rapporteur found large landholdings still belong to the family of the former *Zamindari* king. Over the 1990s, the evidence suggests that concentration in land ownership is increasing, with many more households becoming landless and dependent on casual agricultural labour (45 per cent of households).

He also highlights caste-based discrimination in India which affects rights of Dalits and tribals to land and consequently to food:

14. See next section on Legal Basis for the Human Right to Adequate Housing and Land, for more details on Supreme Court judgements.

15. Report of the Special Rapporteur on the Right to Food, Jean Ziegler, Addendum, Mission to India (20 August- 2 September 2005), E/CN.4/2006/44/Add.2, 20 March 2006.

Scheduled castes and tribes suffer most from hunger and malnutrition, making up 25 per cent of the rural population but 42 per cent of the poor. As a result of discrimination, many low-caste Dalits are expected to work as agricultural labourers without being paid, many held in debt bondage by their higher-caste employers. Although debt bondage is illegal, NGOs estimate that there are between 20 to 60 million bonded labourers in India, 85 per cent of them belonging to scheduled castes and scheduled tribes. Widespread discrimination prevents Dalits from owning land, as they are seen as the “worker class”, and even if they receive land (as a result of redistribution and agrarian reform programmes in some states), such land is frequently taken by force by higher-caste people in the area.

Tribal peoples, particularly those living in forest and hill areas, are extremely marginalized, many having lost access to traditional forest livelihoods and food resources through the creation of Forest Reserves, and many remain without food ration cards or access to government services. Tribal peoples also suffer disproportionately from displacement because of development projects such as dams, power plants, coal mines and mineral industries.

In his recommendations, he specifically calls for:

- (f) Land and agrarian reform should be implemented to strengthen smallholder agricultural livelihoods. Existing agrarian reform legislation should not be undermined to serve the interests of large landholdings of landlords and agribusiness;
- (j) Dams, mining and infrastructure projects must not be implemented if this entails displacement and irreversible destruction of people’s livelihoods. Such projects should only be carried out with the consent of communities and on the condition that due legal process, proper resettlement, rehabilitation (under the “land for land” principle) and compensation to all victims is guaranteed.

Similarly, other UN experts and special rapporteurs, including those on the right to health, indigenous peoples, human rights defenders, and violence against women, have also clearly brought out the interlinkages of other human rights with the right to land and adequate housing, using the indivisibility of rights approach in their reports and joint statements.¹⁶

16. For example, see joint statement issued by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, and the Special Rapporteur on the human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, on concerns over raising the height of the Sardar Sarovar dam, 13 April 2006, at: <http://www.unhchr.ch/hurricane/nsf/view01/EEBEC520B4FA19D5C125714F0055336C?opendocument>

The Human Right to Adequate Housing and Land and the Human Right to Water

Worldwide, more than 1.2 billion people have no access to safe drinking water and 2.4 billion do not have adequate sanitation services. According to UN-Habitat, the number of urban dwellers not receiving safe water has more than doubled during the last decade, from 56 million in 1990 to an unprecedented 118 million in 2000. Graver still, three times as many people are estimated to be living without even minimal sanitation facilities.¹⁷ Given the indivisibility and mutual inextricability of all human rights, the failure to secure the right to water results in a reciprocal cycle of deprivation, impeding the enjoyment of related human rights such as the right to adequate housing, the right to food and the right to health.¹⁸ The right to water as a prerequisite for the realization of the right to adequate housing has been well established and recognised in international law and in the mandates of various UN agencies, including by the Special Rapporteur on adequate housing.

The right to water has been recognised and upheld as a human right in General Comment No. 15 by the Committee on Economic, Social and Cultural Rights (CESCR) in November 2002.¹⁹ It reaffirms the right to water as indispensable for a dignified human life and for realizing other human rights, in particular the rights to food, health and housing. Specifically it stated that “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” (para. 2).

The Committee states:

“Whereas the right to water applies to everyone, Stated parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, Stated parties should take steps to ensure that: ... Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. **Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status**” (para. 16) (emphasis added).

17. Annual report of the Special Rapporteur on adequate housing to the Commission on Human Rights (UN Doc. E/CN.4/2003/5).

18. Miloon Kothari, “Obstacles to Making Water a Human Right” in *The Human Right to Water*, Eibe Riedel, Peter Rothen (eds.), BWV, Berlin, 2006.

19. General Comment 15 on the right to water, Committee on Economic, Social and Cultural Rights (E/C.12/2002/11).

With regard to international obligations, the General Comment sets the normative parameter of water as a “social and cultural good, and not primarily as an economic good” (para.11), and provides guidance to States and international organizations to formulate policies consistent with their obligation under the Covenant. The General Comment also delineates availability, quality and accessibility as three components of adequacy of the right to water that are in turn critical to the understanding of the holistic dimensions of the right to housing (para. 12).

As a human right, the right to water entitles everyone, on the basis of non-discrimination, to sufficient, safe, physically accessible and affordable water, which is of an acceptable quality, for personal and domestic uses. However, the poor and other marginalized groups have the greatest difficulty in accessing sufficient and safe water and adequate sanitation. In many slums and informal settlements around the world, having no water connection means that residents have to pay higher prices to buy water from distribution tankers. In rural areas, women and children often have to walk great distances in search of water to meet minimum household needs. Diseases associated with contaminated drinking water and unsanitary living conditions are among the leading causes of ill-health, and a significant contributor to infant and child mortality in developing countries.²⁰

The human right to adequate housing has been recognised both generally and specifically for different groups of people, given their vulnerability on account of their social, physical or mental condition. For instance, General Comment No. 5 of the Committee on Economic, Social and Cultural Rights (1994) elaborates on the housing rights of persons with disability(ies). General Comment No. 6 (1995) emphasises “... that housing for the elderly must be viewed as more than mere shelter and that, in addition to the physical, it has psychological and social significance, which should be taken into account.” Other international conventions like the Convention on Elimination of All Forms of Racial Discrimination (CERD) 1965, the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) 1979, and the Convention on the Rights of the Child (CRC) 1989, deal with recognition and protection of housing rights of ethnic minorities and people of different nationalities, origin, race and colour without discrimination, and the housing and land rights of women and children respectively.

20. Joint Statement by the Special Rapporteur on adequate housing, Special Rapporteur on the right to food, and Special Rapporteur on the right to the highest attainable standard of physical and mental health under the Commission on Human Rights, Third World Water Forum, Kyoto, 17 March 2003.

Children's Rights and Housing and Land Rights²¹

*"In an inadequate housing environment, children were 40-50 times more likely to die before reaching the age of five."*²²

The human right to adequate housing is integral to the realisation of other basic rights of children. Adequate housing is of particular importance for children as the environment in which they grow up and the living conditions they have to confront, greatly impact their physical, emotional and psychological development. A child's self confidence and identity depends significantly on her/his access to a secure place to live in peace and dignity.

The absence of a secure environment may lead to deprivation of many basic rights of children, including their right to health, education, protection from economic exploitation and abuse, and even the right to a legal identity.

During the National Consultation on Children and Habitat, home was described by children as a place where there is warmth, where they can eat, laugh, play, cry and which is a stable place providing them with opportunities to grow and develop.²³

While children's need for adequate housing is critical, apart from the number of inadequate dwelling units in which children across India live, is the rapidly escalating number of street children in the country.

According to UNICEF, street children are defined as those children for whom the street (in the widest sense of the word, i.e. unoccupied dwellings, wasteland, etc.), more than their family has become their real home, a situation in which there is no protection, supervision, or direction from responsible adults.²⁴ Further, it identifies three operational categories:²⁵

21. For more information, see *Children and the Right to Adequate Housing: A Guide to International Legal Resources* prepared by HAQ: Centre for Child Rights, and Habitat International Coalition – Housing and Land Rights Network, New Delhi, 2002.

22. Report of the Special Rapporteur on Adequate Housing, Justice Rajinder Sachar, appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1992, E/CN.4/Sub.2/1992/15.

23. National Consultation on Children and Habitat: A Statement, Plan International, UNICEF and YUVA, New Delhi, 1995.

24. Definition by UNICEF as cited by Nandana Reddy in *Street Children of Bangalore: A Situational Analysis*, Government of India, Noida, 1992, p. 2, cited in *Police Abuse and Killings of Street Children in India*, Human Rights Watch Children's Rights Project, Human Rights Watch, November 1996, online at: <http://www.hrw.org/reports/1996/India4.htm>

25. *Police Abuse and Killings of Street Children in India*, Human Rights Watch Children's Rights Project, Human Rights Watch, November 1996, online at: <http://www.hrw.org/reports/1996/India4.htm>

1. *Children on the Street*: Forming the largest category, these are children who have homes; most return to their families at the end of the day but work on the streets to augment family income.
2. *Children of the Street*: These children are a group who have chosen the street as their home and it is there that they seek shelter, livelihood, and companionship. They have occasional contacts with their families.
3. *Abandoned Children*: These children have no ties with their families. They are entirely on their own, not only for material survival but also psychologically.

While the exact number of street children is impossible to quantify, the United Nations has been attributed as estimating the population of street children worldwide at 150 million, with the number rising daily.

India has the largest population of street children in the world.²⁶ Actual figures of street children are hard to find, and the only official figure is from 1997 that states the number of street children in India to be 11 million.²⁷ Since then, the number has greatly escalated.

Once on the street, children become vulnerable to all forms of exploitation and abuse, and their daily lives are likely to be far removed from the ideal childhood envisioned in the Convention on the Rights of the Child.²⁸

Street children face hardships of weather, brutal violence, police repression, sexual abuse, malnutrition and hunger, lost educational opportunities, poor health, abject neglect, and multiple human rights violations. The reasons that children find themselves on the street are many and range from escaping economic hardships in rural areas to fleeing violent and abusive family situations, to migrating with their families to cities in search of employment, as well as situations resulting from natural disasters and conflict. Children are also often forced to live on the streets as a consequence of slum demolitions and forced evictions without adequate rehabilitation, displacement due to large-scale development projects, or when they accompany mothers who resort to the streets to escape violent situations. In all cities across India, the number of shelters for street children is grossly inadequate and government efforts to address the needs of street children, severely deficient.

26. United Nations Development Programme (UNDP), *Human Development Report, 1993*, New York, 1993, p. 24.

27. *Fifty Years of Child Development: The Challenges Ahead*, Department of Women and Child Development, Ministry of Human Resource Development, 1997.

28. *The State of the World's Children 2006*, UNICEF, NewYork, 2005.

In both international and national law, children's right to adequate housing has been upheld.

The Supreme Court of India in *Shantistar Builders v. Narayan Khimalal Totame* [(1990) 1 SCC 520: AIR 1990 SC 630] affirmed children's right to adequate housing by declaring that:

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

International human rights treaties, declarations and resolutions that specifically guarantee and protect children's right to housing, among others, include:

- Convention on the Rights of the Child: Article 16 (1), 16(2), Article 27
- Declaration of the Rights of the Child 1959²⁹
- Resolution 1994/8, Children and the Right to Adequate Housing, 1994³⁰
- Commission on Human Rights resolution 1994/93, The plight of street children, 1993
- General Assembly resolution 50/153, The rights of the child, 1995
- General Assembly resolution 54/148, The girl child, 2000
- General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), Committee on the Rights of the Child, 2003
- General Comment No. 17: Article 24 (Rights of the child), Human Rights Committee, 1989
- World Declaration on the Survival, Protection and Development of Children, 1990, World Summit for Children, 1990

Adequate shelter must be recognized as an important component of the particular care and assistance to which children and their families, as well as children living outside or without families, have a right. Special attention must be given to children in difficult circumstances (Habitat Agenda, 94).

*Special attention must be paid to the shelter needs of vulnerable children, such as street children, refugee children, and children who are victims of sexual exploitation... (Habitat Agenda, 13).*³¹

29. Proclaimed by United Nations General Assembly in resolution 1386 (XIV), 29 November 1959.

30. Adopted on 19 August 1994 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-sixth session. 1994/8. Children and the right to adequate housing.

31. The Istanbul Declaration and Habitat Agenda, United Nations Conference on Human Settlements (Habitat II), Turkey, 3-14 June 1996.

- Declaration on Social Progress and Development 1969³²
- Vancouver Declaration on Human Settlements 1976³³
- Istanbul Declaration and Habitat Agenda³⁴

Women's Rights and Housing and Land Rights

Women's right to adequate housing and land, as an inalienable, integral and indivisible component of all human rights, has been recognized, implicitly and explicitly in a range of international and regional human rights instruments.

Women's human right to adequate housing and land needs to be understood in terms of its entitlements. This means that women enjoy the inalienable and equal right to own, access, use, manage, and control land, housing and property. This includes the right to legal security of tenure, which is the right to own, lease, rent, mortgage or dwell on land, housing and property, and the right not to be forcibly evicted. Furthermore, it holds that women have a right to take decisions on how housing and land resources should be used, including whether it can be leased out, mortgaged, or sold.

Several studies, including a comprehensive one by the UN Special Rapporteur on adequate housing, confirm that women's right to adequate housing and land is being violated across the world. While there are many social, economic and political situations that render people insecure, homeless, and without a sustainable source of livelihood, women are particularly vulnerable given the low socio-economic status accorded to them in most societies.

Some specific situations that result in denial or violation of the right to adequate housing include:

- Intra-household and familial disputes leading to breakdown of personal relationships recognised in law and by the society;
- Forced evictions by authorities;
- Slum demolitions;
- Displacement due to development projects;
- Displacement due to natural disasters;
- Displacement due to civil and political wars;

32. Proclaimed by United Nations General Assembly in resolution 2542 (XXIV) on 11 December 1969.

33. Adopted by United Nations Conference on Human Settlements, Vancouver, 1976.

34. The Istanbul Declaration and Habitat Agenda, United Nations Conference on Human Settlements (Habitat II), Istanbul, 3-14 June 1996.

- Displacement due to changes in tenancy laws;
- Forced evictions arising out of violence from the dominant community or the ruling class and caste;
- Environment protection measures taken up by the state that uproot people from their habitat or deprive them of access to forest produce and other natural resources on which they depend for sustenance.

While these circumstances apply to both women and men, there are others that relate specifically to women. These include:

- Change in marital status — due to death of a partner, separation or divorce — as a result of which women are denied the right to access and own housing, land and other property;
- Customs and traditions that outcast women from the social system, e.g. a widow is often forced to leave or is thrown out of her family and regarded as an outcast, thereby depriving her of her basic right to life, which includes housing;
- Gender-neutral laws, which are interpreted and implemented in ways that discriminate and disadvantage women;
- Stigmas attached to status of women as single women, which exclude them from accessing their equal rights to housing, land and other property;
- Customs and traditions that do not recognise women's contributions as productive;
- Customs and traditions that prevent women from inheriting or owning property;
- Absence of gender-sensitive laws, policies and programmes, including on resettlement and rehabilitation;
- Lack or absence of institutional support in times of distress and homelessness, for example, lack of adequate shelters and temporary housing spaces for women;
- Laws that deny women legal security of tenure;
- Credit facilities that discriminate against women.

“... women generally lack security of tenure. This is largely a result of gender-biased laws, which at their best only protect married women and at their worst do not protect women at all; legal systems which are inaccessible to women or which privilege customary law over statutory law; land and house titling systems which

*grant title to men rather than women or which require payment for land/houses which women cannot afford; and discriminatory lending or credit policies.”*³⁵

Lack of access to and control over land, housing and property constitutes a violation of human rights and contributes significantly to women’s increasing poverty and marginalisation.

Certain groups of women may be more vulnerable than others, and face a greater risk of becoming homeless, facing violence or suffering from the consequences of inadequate housing and living conditions and lack of land rights. Such groups generally face greater discrimination and often include victims of domestic violence, widowed, elderly, divorced or separated women, female-headed households, women forcibly separated from their children, women victims of forced evictions, indigenous and tribal women, women with disabilities and women in conflict/post-conflict situations, women from ethnic and national minorities, including refugees, migrant women workers, women from descent- and work-based communities, domestic women workers, sex workers, and lesbian and transgender women.³⁶ Many women are subjected to multiple layers of discrimination within the community and by the State on the grounds of them being women, as well as member of a minority group.

Domestic violence can greatly increase women’s vulnerability to homelessness, especially when there is a lack of protection by law enforcement officials, or by the legal system itself. Certain cultural norms and traditions also tend to deprive women of their rights to land, inheritance and property, which in turn prevents them from accessing their right to adequate housing and land.³⁷ Of particular concern is the reflection of discriminatory cultural and social norms in family or personal laws. The UN Special Rapporteur on the right to adequate housing in his report on women and adequate housing clearly brings out the direct relation between inadequate housing and violence against women, where the lack of adequate housing can make women more vulnerable to various forms of violence and, conversely, violence against women can lead to the violation of women’s rights to adequate housing.³⁸

35. *Women’s Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview*, UN Habitat, Nairobi, 1999, pp. viii.

36. Report of UN Special Rapporteur on Adequate Housing, Miloon Kothari, on women and housing, Commission on Human Rights, E/CN.4/2006/118, 27 February 2006.

37. For more information and case studies and testimonies from India, see *Proceedings of the Asia Regional Consultation on “Interlinkages between Violence against Women and Women’s Right to Adequate Housing,”* Asia Pacific Forum on Women, Law and Development, Chiang Mai, 2004. Also available at: www.hic-sarp.org

38. Report of UN Special Rapporteur on adequate housing, Miloon Kothari, on women and housing, E/CN.4/2005/43, 25 February 2005.

In urban areas, women living in slums and on the streets are greatly impacted due to the absence of proper shelter, adequate water, health, sanitation and hygiene. Women are adversely affected by evictions owing to, for example, urban slum demolitions, or as a result of large-scale development projects. Women suffer not just from loss of home, but also livelihoods, relationships and support systems, physical and psychological trauma and even increased morbidity and mortality. Women particularly suffer where forced evictions are accompanied by violence.³⁹ Different forms of gender discrimination also give rise to threat of forced evictions for women. For instance, domestic women workers, sex workers, and women migrant workers are vulnerable to being evicted from accommodation provided with their work; women who are married are vulnerable to eviction due to dowry-related issues; women who are living with HIV/AIDS are vulnerable to eviction and women living with their husband's family are vulnerable to being evicted as widows or due to domestic violence or divorce.⁴⁰

Several international human rights documents have guaranteed women their right to adequate housing and land. These include:

- Article 14, Convention on the Elimination of All Forms of Discrimination against Women, 1979;
- Article 3, International Covenant on Civil and Political Rights, 1966;
- Article 3, International Covenant on Economic, Social and Cultural Rights, 1966;
- General Recommendation No. 21, Equality in Marriage and Family Relations, Committee on the Elimination of Discrimination against Women, 1994;
- United Nations Millennium Declaration, 2000, General Assembly resolution 55/2;
- Article 3, Declaration on the Elimination of Violence against Women, 1993, General Assembly resolution 48/104;
- Article 8, Declaration on the Right to Development, 1986, General Assembly resolution 41/128;
- Commission on Human Rights resolution 2005/25, Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, 2005;

39. Report of UN Special Rapporteur on adequate housing, Miloon Kothari, on women and housing, Commission on Human Rights, E/CN.4/2005/43, 25 February 2005.

40. Report of UN Special Rapporteur on adequate housing, Miloon Kothari, on women and housing, Commission on Human Rights, E/CN.4/2006/118, 27 February 2006.

- Vancouver Declaration on Human Settlements, United Nations Conference on Human Settlements (Habitat Agenda), 1976;
- Istanbul Declaration on Human Settlements, United Nations Conference on Human Settlements (Habitat II), 1996;
- Beijing Declaration and Platform of Action, 1995, Fourth World Conference on Women
- Article 6, Plan of Implementation, United Nations World Summit on Sustainable Development, 2002;
- Principle 20, Rio Declaration, United Nations Conference on Environment and Development, 1992
- Article 26, Copenhagen Declaration, World Summit for Social Development, 1995;
- Vienna Declaration and Programme of Action, 1993, World Conference on Human Rights;
- Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 1997.

General comment No. 16 on “The equal right of men and women to the enjoyment of all economic, social and cultural rights” (article 3 of the International Covenant on Economic, Social and Cultural Rights)⁴¹ further strengthens the principle of substantive equality and lays down beyond a prohibition of discrimination: “the same rights should be expressly recognized for men and women on an equal footing and suitable measures should be taken to ensure that women had the opportunity to exercise their rights ...” And, “Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.” Further it makes it incumbent on the State to guarantee this. “The equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States parties.”

Women’s Land Rights

Land, apart from being a productive resource also provides a great degree of socio-economic security and stability. The control and ownership of land by women also serves as an empowering resource and helps to balance gender dynamics, especially in historically patriarchal societies. In India, however, few women own arable land and even fewer effectively control it.

41. Adopted by the Committee on Economic, Social and Cultural Rights at its thirty-fourth session, Geneva, 25 April – 13 May 2005, E/C.12/2005/4.

With the growing migration of men to urban areas in search of employment, it is mainly women who continue to farm in rural areas. In India, for instance, 58 percent of all male workers but 78 percent of all female workers, and 86 percent of all rural female workers, are in agriculture.⁴² This rising trend of “feminization of agriculture” means that women are more dependent on land, thereby highlighting the importance of recognizing and guaranteeing their rights over it.

The Bodhgaya movement initiated in 1978 in the Gaya district of Bihar was historic in its significance for women’s land rights. Women were at the forefront of this struggle by landless labourers and sharecroppers to gain rights to land, which they had cultivated for decades. In 1980 women demanded and independently captured about 3,000 acres of land and ploughed it.

Land rights could take the form of ownership or usufruct (rights of use), and could encompass differing degrees of freedom to lease, mortgage, bequeath, or sell. Rights over land and property typically consist of a bundle of overlapping rights that could include both individual and collective systems of ownership, management and control of resources. The legal recognition of land rights for women – in the form of both individual and collective systems of tenure security – apart from balancing historic inequities in power relations, providing security against violence, improving women’s socio-economic status, also enhances productive efficiency.

Despite the existence of strong movements for land reform and struggles for land rights, women’s rights to land are still not universally guaranteed or respected.

In policy too, patriarchal biases persist and women are not necessarily considered equal holders and owners of land. In the recent past, however, certain initiatives have been undertaken to reverse this. For instance, in September 2005, an amendment to the 1956 Hindu Succession Act removed gender inequalities in the inheritance of agricultural land, and made Hindu women’s land rights legally equal to men’s across states by making daughters, especially married daughters, coparceners in joint family property.⁴³ The new Protection of Women from Domestic Violence Act 2005, though not without loopholes, also contains provisions for a woman not to be evicted from her home while upholding her right of residence and right to housing and property.

42. Bina Agarwal, *Are We Not Peasants Too: Land Rights and Women’s Claims in India*, SEEDS, New York, 2002.

43. For more information see, “Landmark Step to Gender Equality” by Bina Agarwal, in *The Hindu*, 25 September, 2005.

The existence of strong international laws and the need to bring about changes in national law and policy to rid them of patriarchal biases and make them gender-equal, though necessary, are not sufficient conditions to ensure the realisation of women's rights to housing and land. Social attitudes, especially within customs and traditions, need to first change in order to bring about substantive gender equality and to effect true reform in the status of women's housing land rights.

What Needs to Be Done?

For Improving Women's Claims in Private Land

1. Gender equality in inheritance laws
2. Legal literacy and legal support services
3. Village-level recording of women's shares
4. Social and economic support for women from outside the family, including through an effective social security system
5. Changing social attitudes

For Improving Women's Access to Public Land

Gender equality in public land distribution in:

1. Land reform schemes
2. Resettlement schemes
3. 3 Other schemes, such as those initiated under poverty-alleviation programmes

For Improving Women's Access to Land Via the Market

1. Subsidized credit for land purchase or lease
2. Land purchase or lease via group formation, and group cultivation of such land

For Improving the Viability of Women's Farming Efforts

1. Agricultural extension services and other infrastructural support for women farmers
2. Resource pooling and group investment in capital equipment; cooperative marketing
3. Women's effective presence in village decision-making bodies
4. Gender sensitizing through the media, educational institutions, etc., for changing social norms and social perceptions.

[Source: Bina Agarwal, *Are We Not Peasants Too? Land Rights and Women's Claims in India*, SEEDS, New York, 2002]

Legal Basis for the Human Right to Adequate Housing and Land

The right to adequate housing and land has been widely recognised and upheld in national and international law. This means that states have to take measures to protect, promote and guarantee the rights enshrined in law to all citizens.

National Legal Obligations

Many national and municipal laws in a number of countries around the world provide for the guarantee of the human right to adequate housing and land.

India also has certain constitutional provisions and laws that make it obligatory for the state to provide the right to adequate housing to all its citizens.

The Constitution of India is firmly grounded in the principles of liberty, fraternity, equality and justice. The list of constitutional provisions that have a bearing on the right to adequate housing including women's and children's rights to adequate housing, are:

Fundamental Rights

- Equality before the law (Article 14)
- Non-discrimination on grounds of religion, race, caste, sex, place of birth (Article 15 (1))
- Special provisions in favour of women and children based on the principle of protective discrimination (Article 15 (3))
- Equality of opportunity in matters relating to employment or appointment of any office under the State (Article 16)
- Freedom to move freely throughout the territory of India (Article 19(1) (d))
- Freedom to reside and settle in any part of the territory of India (Article 19 (1) (e))
- Right of all citizens to practice any profession, or to carry on any occupation, trade or business (Article 19 (1) (g))
- Right to life and personal liberty (Article 21)

Directive Principles of State Policy

- State policy to be directed to securing for both men and women equally, the right to an adequate means of livelihood (Article 39 (a))
- State policy to be directed to ensure equal pay for equal work for both men and women (Article 39 (d))
- State policy to be directed towards securing that the health and strength of workers, men and women and children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength (Article 39 (e))
- State policy to secure equal justice and free legal aid to ensure that opportunities of securing justice are not denied to any citizen (Article 39-A)
- Provisions to be made by the State for securing just and humane conditions of work and for maternity relief (Article 42))
- State to secure a Uniform Civil Code for the citizens (Article 44)
- Duty of the State to raise the level of nutrition and the standard of living and to improve public health (Article 47)
- State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another (Article 51 (c))

Fundamental Duties

- A fundamental duty of the State and all citizens to renounce practices derogatory to the dignity of women (Article 51(A)).

Legal Right to Property

- No man or woman shall be deprived of their right to property by the State except by authority of law (Article 300-A).

Article 21 of the Constitution of India states that:

No person shall be deprived of his life or personal liberty except according to procedure established by law.

There have been several important judgments that have clearly established the relation between the right to housing and right to life as guaranteed by Article 21. The Supreme Court of India has held that the right to shelter or adequate housing is a fundamental human right emanating from this provision. This has been established in numerous Supreme Court decisions, including *U.P. Avam Evam Vikas Parishad v. Friends Coop. Housing Society Ltd.* where the Court held 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, *in Francis Coralie vs. Union Territory of Delhi*,⁴⁴ the Supreme Court held:

“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.”

The court provided further interpretation of the right to life in *Chameli Singh and others v. State of UP* [(1996) 2 SCC 549 132]:

In any organised society, the right to live as a human being is not ensured by meeting only the animal-needs of man. It is secured only when he is assured of all facilities for his self-development and is freed from restrictions inhibiting his growth. All human rights are designed to achieve this object. 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 Convention or under the Constitution of India cannot be exercised without these basic human rights.

It further expanded that:

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

44. AIR 1981 SC 746, at 753.

and water, electricity, sanitation 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 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.

The Supreme Court in the case *Shantistar Builders v. Narayan Khimalal Totame* [(1990) 1 SCC 520] held that:

The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.

It also made specific mention of children's right to adequate housing by stating that:

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

In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and Others*, the Supreme Court observed that:

Article 19 (1) (e) accords right to residence and settlement in any part of India as a fundamental right.

In the same case, the Court also stressed special protection for Scheduled Castes and Tribes:

The State and consequentially the local authorities are charged with the constitutional duty to provide the weaker sections, in particular the Scheduled Castes and Scheduled Tribes with socio-economic and political justice and to prevent their exploitation and to prevent them from injustice. The Union of India has evolved Indira Avas Yojna Scheme exclusively to provide housing accommodation to the Scheduled Castes and Scheduled Tribes and separate annual budgets are being allotted in that behalf by Parliament and the appropriate legislatures in allied matters.

In *Olga Tellis v. Bombay Municipal Corp.* [(1985) 3 SCC 545], the Supreme Court held that Article 21 of the Constitution also encompassed the right to livelihood and that this right was indivisible from the right to shelter:

Eviction of the petitioners from their dwellings would result in the deprivation of their livelihood. Article 21 includes livelihood and so if the deprivation of livelihood were not affected by a reasonable procedure established by law, the same would be violative of Article 21 ... The right under Article 21 is the right to livelihood, because no person can live without the means of living i.e. the means of livelihood. If the right to livelihood were not to be recognised as part of the Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. ... There is thus a close nexus between life and means of livelihood. And as such that which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life.

Article 51 of the Constitution of India establishes that:

The State shall endeavour to (c) Foster respect for international law and treaty obligations in the dealings of organized people with one another....

The Supreme Court in *Madhu Kishwar v. State of Bihar*, (1996) 5 SCC 125, affirmed this:

Articles 13, 14, 15 and 16 of the Constitution of India and other related articles ... aim at elimination of obstacles to enjoy social, economic, political and cultural rights on equal footing ... Legislative and executive actions must be conformable to, and effectuation of the fundamental rights guaranteed in Part II and the directive principles enshrined in Part IV and the Preamble of Constitution. Covenants of the United Nations add impetus and urgency ... Legislative action should be devised suitably... Article[s] 51 of the Constitution of India is a mandate for the State to do these acts...

Gramophone Co. of India v. B.B. Pandey, 1984 (2) SCC 534, *PUCL v. Union of India*, 1997 (3) SCC 433, and *CERC v. Union of India*, (1995) (3) SCC 42 also support this assertion.

The Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act 1995, upholds the right of persons with disabilities to housing and land:

Chapter VII: Affirmative Action

43. Schemes for preferential allotment of land for certain purposes

The appropriate Governments and local authorities shall by notification frame schemes in favour of persons with disabilities, for the preferential allotment of land at concessional rates for: (a) house.

International Legal Obligations⁴⁵

India's international legal obligations with respect to the right to adequate housing are set out in a body of binding international treaties, which India has ratified. These instruments include: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). As a signatory to these conventions, India is obligated to ensure that the economic, social and cultural rights set out in each of them are promoted and protected in Indian society.

General Comment No. 4 of the Committee on Economic, Social and Cultural Rights (CESCR) on "The right to adequate housing" sets out minimum core obligations of the right contained in Article 11(1) of the ICESCR that must be immediately fulfilled. These minimum core obligations are as follows:

- *Legal Security of Tenure*: There should be protection against forced eviction and harassment.
- *Availability of services, materials, facilities and infrastructure*: There must be made available facilities essential to health, security comfort and nutrition. These facilities include, but are not limited to, safe drinking water, sanitation and washing facilities, and energy for cooking, heating and lighting.
- *Affordability*: Expenditures for housing should be commensurate with income levels. Basic needs should not be compromised.
- *Habitability*: There should be adequate space and protection from the elements. Conditions conducive to disease and structural hazards should be eliminated.
- *Accessibility*: All should have access to adequate housing. The government must ensure that everyone has access to a secure place to live in peace and dignity
- *Location*: Adequate housing must allow for access to employment options (the right to livelihood), healthcare, schools and other social services.

45. See Annex I for text from relevant international human rights documents.

There must not be excessive financial or temporal demands on the household in respect to transportation.

- *Cultural Adequacy*: The housing configuration must not compromise cultural expression.

Resource constraints do not in any way eliminate a State's obligation to fulfil these minimum levels of rights. To this end, General Comment No. 3 of CESCR (The nature of States parties obligations) instructs that ensuring the "... minimum essential levels of each of the rights are incumbent upon every State party. Thus, for example, a State in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant...even where the available resources are demonstrably inadequate, the obligation remains for a State party."

Furthermore the Covenant calls for progressive realisation of all rights, which is elucidated in General Comment 3: "It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."

Apart from the legally binding international human treaties is the body of declarations, recommendations and resolutions. These are generally documents of intent often perceived as "soft law," and in most cases do not create legally binding obligations on the countries that have signed them. In some instances, a declaration and/or recommendation may gain the force of binding law if its contents are widely accepted by the international community.

Accordingly, the courts, the legislature and executive bodies must abide by international law in their decision-making, policies and practices.

A. Binding Instruments

- a. Article 12, 25(1), Universal Declaration of Human Rights, 1948
- b. Article 17, International Covenant on Civil and Political Rights, 1966
- c. Article 11 (1), International Covenant on Economic, Social and Cultural Rights, 1966

- d. Article 5, International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- e. Article 14, Convention on the Elimination of All Forms of Discrimination against Women, 1979
- f. Article 16.1, 19.1, 27, Convention on the Rights of the Child, 1989
- g. Article 9, International Labour Organization Social Policy (Non-Metropolitan Territories) Convention, 1947

B. Guidelines/Principles/Declarations

- General Comment No. 4 ‘The Right to Adequate Housing’ (Art. 11 (1) of the Covenant), Committee on Economic Social and Cultural Rights, 1991
- General Comment No. 7 ‘The Right to Adequate Housing: Forced Evictions’ (Art. 11 (1) of the Covenant), Committee on Economic Social and Cultural Rights, 1997
- General Recommendation No XIX: Article 3 of the Convention, Committee on the Elimination of Racial Discrimination, 1995
- United Nations General Assembly resolution 43/181, United Nations Global Strategy for Shelter to the Year 2000, 1998
- Housing and property restitution in the context of refugees and other displaced persons, Sub-Commission on Human Rights resolution 2002/7
- Women’s equal ownership of, access to and control over land and the equal rights to own property and to adequate housing, 2005, Commission on Human Rights resolution 2005/25
- Forced Evictions, Commission on Human Rights resolution 1993/77, 1993
- Declaration on Social Progress and Development, 1969 General Assembly resolution 2542 (XXIV)
- Article 8, Declaration on the Right to Development, 1986, General Assembly resolution 41/128
- Principle 1, United Nations Principles for Older Persons, 1991, General Assembly resolution 46/91
- Article 21, Convention relating to the Status of Refugees, 1951
- Vancouver Declaration on Human Settlements, United Nations Conference on Human Settlements (Habitat I), 1976

- The Istanbul Declaration and the Habitat Agenda, Second United Nations Conference on Human Settlements (Habitat II), 1996
- Article 10, Plan of Implementation, United Nations World Summit on Sustainable Development, 2002
- Principle 18, Guiding Principles on Internal Displacement, 1998, Commission on Human Rights
- Guideline 18, UN Comprehensive Human Rights Guidelines on Development-Based Displacement, 1997, adopted by the Expert Seminar on the Practice of Forced Evictions, Geneva
- International Labour Organization Recommendation No. 115 concerning Worker's Housing, 1961
- Article 43.1, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Basic principles and guidelines on development-based evictions and displacement, March 2006 (Commission on Human Rights, E/CN.4/2006/41)
- The Practice of Forced Evictions: Comprehensive Human Rights Guidelines on Development-Based Displacement, adopted by the Expert Seminar on the Practice of Forced Evictions Geneva, 11–13 June 1997
- Voluntary Guidelines for the Progressive Implementation of the Right to Food, World Food Summit 2002 (adopted in 2004)
- Agenda 21, Chapter 7 – Promoting Sustainable Human Settlement Development – adopted at the United Nations Conference on Environment and Development, 1992.

Apart from women and children, the human right to adequate housing and land has also been provided in international law for historically marginalized and discriminated groups, who deserve specific attention. Some of the relevant international human rights documents pertaining to special groups are mentioned below.

Migrant Workers

- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990
- International Labour Organization Convention on Migrant Workers, 1949

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

Older Persons

- General Comment No. 6: 'The economic, social and cultural rights of older persons', Committee on Economic, Social and Cultural Rights, 1996;
- United Nations Principles for Older Persons, 1991, General Assembly resolution 46/91;
- Integration of older women in development, 1994, General Assembly resolution 49/162.

Persons with Disabilities

- General Comment No. 5: Persons with disabilities, Committee on Economic, Social and Cultural Rights, 1994
- The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2005, Commission on Human Rights resolution 2005/24
- Declaration on the Rights of Disabled Persons, 1975, General Assembly resolution 3447 (XXX)

People Living with HIV/AIDS

- International Guidelines on HIV/AIDS and Human Rights, 1997, UN Commission on Human Rights resolution 1997/33
- The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS), 2005, Commission on Human Rights resolution 2005/84
- Declaration of Commitment on HIV/AIDS, 2001, General Assembly resolution S-26/2

Minorities (including religious, linguistic, descent-based)

- International Convention on the Elimination of All Forms of Racial Discrimination
- Article 27, International Covenant on Civil and Political Rights, 1966
- General Comment No. 23: Article 27 (Rights of minorities), Human Rights Committee, 1994

- General Recommendation No. XX on article 5 of the Convention, Committee on the Elimination of Racial Discrimination, 1996
- General Recommendation No XXIX on article 1, paragraph 1 of the Convention (Descent), Committee on the Elimination of Racial Discrimination, 2002
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, General Assembly resolution 47/135
- Durban Declaration, 2001, World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001
- Rights of persons belonging to national or ethnic, religious 2005, Commission on Human Rights resolution, 2005/79

Indigenous Peoples

- United Nations Declaration on the Rights of Indigenous Peoples, 2006
- International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989
- General Recommendation No. XXIII on the rights of indigenous peoples, Committee on the Elimination of Racial Discrimination, 1997
- Human rights and indigenous issues, 2005, Commission on Human Rights resolution 2005/51

Non-nationals/Non-citizens

- Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live, 1985 General Assembly resolution 40/144

Internally Displaced Persons

- Principle 14, 18, Guiding Principles on Internal Displacement, 1998, Commission on Human Rights
- Copenhagen Declaration, 1995, World Summit on Social Development

Factors Impacting the Realisation of the Human Right to Adequate Housing and Land

The human right to adequate housing and land, though legally protected and guaranteed in a variety of international and national laws and policies, continues to be violated, denied and threatened across India. Some of the major factors contributing to this persistent violation are described below.

Degenerating Role of the Judiciary

Reversing a span of progressive judgements, strong public interest litigation and judicial activism, the Indian judiciary has taken on an ugly anti-people garb. In recent years, the Supreme Court and High Courts have passed a number of anti-poor judgements, thereby revealing a complete shift in priorities and a violation of the principles of natural justice. Over the last few years, judgements of the Indian judiciary have contributed to the violation of housing and land rights, especially of the poor. This marks a sharp turn from judgements mentioned in the previous section that expanded the right to life to include the right to adequate housing.

Derogatory statements against slum dwellers come not just from upper class citizens, but also from the Supreme Court, as in the *Almitra Patel v. Union of India* case. While the court expressed displeasure at displaced slum dwellers being given alternative sites, the court ordered that land be transferred free to the municipal corporation, so that it could create garbage dumps. “Keeping Delhi clean is a governmental function,” the Court said.

“It is the duty of all concerned to see that landfill sites are provided in the interests of public health...Not providing the same because the MCD is unable to pay an exorbitant amount is understandable. Landfill site has to be provided and it is wholly immaterial which governmental agency or the local authority has to pay the price for it.”⁴⁶

When it was a question of slums, however, the same Court said:

“The establishment of creating slums, it seems, appears to be a good business and is well organised. The number of slums has multiplied in the last few years in geometrical proportion. Large areas of public land, in this way, are usurped for private

46. *Almitra Patel v. Union of India*, [(2000) 2 SCC 679] at 571-72.

us, i.e. free of cost.... Rewarding an encroacher on public land with free alternate site is like giving a reward to a pickpocket.”⁴⁷

The Bombay High Court in *Bombay Environmental Action Group & Anr. V. A.R. Bharti, Dy. Conservator of Forests, SNGP & Ors*, Writ Petition No. 305 of 1995, and the Supreme Court in *Narmada Bachao Andolan v. Union of India and Others* and in *Almitra H. Patel & Anr. v. Union of India and Others*, have effectively abandoned precedent, violated India’s Constitution and international law, and denied human rights to Indian citizens and residents. In addition, these decisions fail to recognize the indivisibility and interdependence of human rights, and specifically between the right to environment and the right to adequate housing.

The judiciary has not just failed to protect the rights of the poor, but in fact is spearheading a massive assault on the poor. As Supreme Court lawyer Prashant Bhushan says, “Public Interest Litigation has been turned on its head. Instead of being used to protect the rights of the poor, it is now being used by commercial interests and the upper middle classes to launch a massive assault on the poor, in the drive to take over urban spaces and even rural land occupied by the poor, for commercial development.”⁴⁸

The Courts have recently issued a number of orders for clearing slums, on the ground that they are on public land. Over 5000 houses on the banks of the Yamuna in Delhi were demolished in order to clear land for constructions for the Commonwealth Games.

Ignoring the jurisprudence developed over two decades by it, the Supreme Court dismissed a writ petition in May 2006 asking for a stay on demolitions and orally observed that nobody asked these persons to come to Delhi if they could not afford housing here, and that they had no right to occupy public land.⁴⁹ In response to the plea that it was unreasonable to oust slum dwellers under such intense heat conditions, the same bench of the Supreme Court said:

“In India we have three weather conditions—heat, rain and winter. If we accept your argument, there will never be an appropriate time to demolish illegal structures standing on public land.” The judges also orally added, “Nobody forced you to come to Delhi. Is there a right to live in Delhi only? Stay where you can. If encroachments on public land are to be allowed, there will be anarchy... If you are occupying public land, you have no legal right, what to talk of any fundamental right, to stay there for a minute longer... Tomorrow you can come to the Supreme Court and settle here claiming a right. Your (the counsel’s) home could also be occupied by them. There has to be an end to this.”

47. *Ibid* at 570-71.

48. Prashant Bhushan, “Assault on the Poor,” New Delhi, May 2006.

49. *Ibid*.

In *Navniti CGHS v. Lt. Governor* (WP (C) 5697/2002), the order of demolition of a slum cluster was given in August 2004 by the Delhi High Court, which gave the Delhi Development Authority (DDA) enough time to properly relocate the evictees. In the absence of any DDA plans, however, the Court ordered contempt against the Vice Chairman of DDA, who then ordered demolition of the site immediately in order to save himself. Houses were demolished without any prior information notice on 23 February 2006, and residents were not provided with any resettlement.

The current orders clearly favour the rich and influential while the urban poor are increasingly being called 'illegal occupants,' 'encroachers' and 'trespassers' and being denied the fundamental right to live freely in any part of Indian territory, and the right to life with dignity.

The outcome of this is that in Delhi in the past five years more than 1 lakh (100,000) families have been evicted, while less than 20 % of them have been resettled, and that too on the outskirts of the city, far from their sources of livelihood.⁵⁰

This abdication of the state's role to serve as the guardian and promoter of human rights forms a trend toward legally and judicially facilitating the accumulation of assets by those who can invest in developing property for the market.

Shifts in Policy

The continued existence and implementation of draconian and archaic laws such as the Land Acquisition Act, 1894, are used by the state to take over land, ostensibly in the "public interest" which, however, is never clearly defined and extends to all state-sponsored projects be they highways or housing colonies for the rich.

The glaring gap between the failure of civic agencies to provide low cost housing and infrastructure that they are mandated to provide and the rising demand for housing, forces migrants and other urban workers to set up their own substandard settlements through non-institutional channels. Despite the fact that the majority of the urban population lives in slums in Mumbai (around 60% of the population) and in Delhi (around 50% of the population), there is no concerted, integrated effort to develop human rights-based policy or to increase housing, especially the availability of low cost housing. Changes in

50. D. Leena, "Law vs. Justice," Hazards Centre, New Delhi, May 2006.

urban policy over the years have also reflected a glaring disregard for the human right to adequate housing and land. Instead of guaranteeing the right to all city residents based on principles of non-discrimination and substantive equality and addressing the genesis of slum creation, policy instead has tended to focus merely on “upgradation” and relocation.

The Delhi Development Authority (DDA) has only managed to meet 35% of housing targets in past decades. Without analysing the failure of DDA in providing developed land and shelter all these years, the Draft Delhi Master Plan 2021 instead advocates for a “multi-pronged strategy for provision of housing stock... involving the private sector to a significant extent” (up to 81%). It also assures the poor that they can buy homes measuring a minimum of 25 square metres (as opposed to the present norm of 12.5 square metres), but these will be in vertical high-rises, where maintenance costs are known to be high. The Draft Plan, as Dunu Roy further states, is an outstanding example of a fabricated, illogical, unreal and anti-people nightmare fondly nurtured by the global and national elite.⁵¹

While much of the city’s growth depends on the labour of the poor, the pro-rich bias of the policies and schemes of the state and its various agencies have ensured that the poor remain at the periphery, of both land security and availability of basic services.

Any city master plan aimed at creating a slum free city has to first identify realistic bottlenecks in supply in order to meet the demand for housing and ensure the development of appropriate alternatives for adequate housing for the vulnerable first. Since access to land is synonymous with housing, a master plan must identify appropriate land in sufficient quantities and make it available for housing lower income groups through legal arrangements that will protect the land from being diverted to other uses or groups.⁵²

Policy specifications for cut-off dates for legalisation of slums continue to remain arbitrary and are not based on any substantial rationale. They not only create conflicts among slum residents but also sanction demolitions of houses thereby disenfranchising many and pushing them further on the margins of city existence. Irrespective of when anyone moves to a city, the government must make provisions to ensure equitable access to and availability of adequate and affordable housing facilities.

51. Dunu Roy, “Introducing the Draft Master Plan for Delhi – 2021” in *Draft Delhi Master Plan 2021: Blueprint for an Apartheid City*, Hazards Centre, New Delhi, July 2005.

52. Sunitha Dasappa Kackar, “MPD-2021 and the Vision of a “Slum-Free Delhi” in *Draft Delhi Master Plan 2021: Blueprint for an Apartheid City*, Hazards Centre, New Delhi, July 2005.

Though the National Habitat and Housing Policy, 1998 stated that, “After fifty years of independence most of us still live in conditions in which even beasts would protest. ... The situation is doubtless grim and calls for nothing less than a revolution – A Housing Revolution,” in practice the housing situation in the country is still grim. On the one hand the Policy set a target of construction of two million houses every year with emphasis on housing for low-income groups, economically weaker sections, dalits, SC/STs and women, while on the other, it categorically stated that, “corporate, private and cooperative sectors would take the lead in land assembly, construction of houses and development of amenities.”

The “housing for all” goal of policy thus remains merely on paper, while in reality strong neoliberal forces influence the land and housing market. The draft National Urban Housing and Habitat Policy 2005 clearly reflects this pro-market shift. While it states that, “housing is a very important tool to alleviate poverty and generate employment” it advocates the Jawaharlal Nehru National Urban Renewal Mission (see box), increased foreign direct investment in housing, and easier acquisition of land for use by private developers – all of which directly contravene interests of low income groups. Furthermore, it supports the repeal of the Urban Land (Ceiling and Regulation) Act, 1976 – a move which only exacerbates inequality. On the contrary, the Act needs to be reintroduced and strictly implemented in order to check against agglomeration of urban land in the hands of a few and to enable an egalitarian redistribution of excess land, which would make land available for public housing projects for low-income populations.

Despite the fact that more than 30 percent of India’s population lives in slums and this number is growing, there is still no comprehensive national slum policy. The Ministry of Urban Development and Poverty Alleviation, Government of India finalised the National Slum Policy Draft in April 1999, but the Government of India has still not announced a National Slum Policy. The Draft National Slum Policy of 1999 while containing few positive provisions such as guidelines to stop forced evictions and creation of alternative resettlement zones, needs to go much further in bringing about housing rights reform.

The National Policy on Resettlement and Rehabilitation 2004 also fails to address the human rights implications of involuntary displacement. It has numerous shortcomings and remains a weak document, which has only facilitated project-based displacement rather than reverse it. It also does not provide for a mechanism either at the state or central level to oversee and ensure the implementation of core human rights principles such as public consultation, participation of affected people, information, and most importantly the right to an equal share in project benefits.

Other policies in the pipeline that would affect the human right to adequate housing and land include the Draft National Development, Displacement and Rehabilitation Policy (January, 2006) and the Scheduled Tribes (Recognition of Forest Rights) Bill 2005 – both still undergoing debate and discussion. The latter, in its amended form is considered a big step forward in the struggle for rights of tribals and other natural resource dependent marginalized communities.

Positive policy initiatives are rare, and even where they do exist, are not necessarily favourably implemented. Policy, unfortunately, still often tends to reflect deep set middle class prejudices against the working poor – both rural and urban. It will require concerted work to dismantle existing stereotypes, which include perceptions of slums as centres of illicit activities and slum dwellers as criminals, illegal residents or encroachers and rural tribals as non-citizens.

Economic and Corporate Globalisation and Privatisation of Basic Services

Over the last decade, one of the major factors affecting housing and land rights across the world has been the shift in economic policies towards globalisation, structural adjustment progra-

The Jawaharlal Nehru National Urban Renewal Mission (JNNURM)

The recently launched JNNURM – a mega programme involving Rs. 100,000 crores to be spent over seven years in 86 cities and urban areas – includes several plans for development of urban infrastructure and “upgradation” of cities. While the plan briefly mentions the urban poor, its driving force seems to be private investment gains and not equity. It aims to be a reforms-driven, fast-track, planned development project that focuses on efficiency in urban infrastructure and services delivery, community participation, and accountability of local governments towards citizens. The following broad framework is proposed for the Mission:

- Central sponsorship
- Sector-wise project reports would be prepared by identified cities listing projects along with their priorities.
- The funding pattern would be 35:15:50 (between Centre, States/urban local governments [ULGs]. and financial institutions) for mega cities (>40 lakh (4 million) population); 50:20:30 for cities with populations between one and four million; and 80:10:10 for other smaller cities.

The grant assistance (both Central and State) would act as seed money to leverage additional resources from financial institutions/capital market.

[For more information, see Vinay Bahadur, “For the People, by Diktat,” India Together, 5 September 2005. <http://www.indiatogether.org/2005/sep/gov-nurm.htm>]

mmes and the growing involvement of the private sector in delivery of essential services.

Typically the burden of such programmes falls disproportionately on the poor, and more significantly on women and children. These programmes impact housing and land rights both directly as well as indirectly.

The direct impact of such programmes is felt through cutbacks in social sector spending such as health, education, nutrition and other social services.

The major negative impacts that such trends have on housing and living conditions include:

- 1) Decreasing salaries and purchasing power. Free market policies often result in a fall in salaries and an increase in unemployment and underemployment. Workers thus do not have enough resources to meet their basic needs, particularly their need for housing and access to resources, which become unaffordable.
- 2) The disappearance of subsidies for low-cost housing. These subsidies are generally the first to be affected by drastic reductions in public and social expenditure.
- 3) The abandonment of social responsibility by the government. Cutbacks in social expenditure often lead the government abdicate its social responsibilities towards its citizens and to delegate them, including public housing programmes, to private initiatives. The private sector, including foreign actors, thus becomes the major actor in housing production, provoking a general increase in prices.
- 4) Pre-eminence of the neoliberal ideology. Under neoliberalism, housing and land are treated as commodities subject to the free play of market forces. Land and housing can thus only be obtained if one can afford it.
- 5) Transformation of essential services to exclusive services. The privatisation of public services such as water and healthcare, results in higher costs thereby excluding many low-income groups from being able to access them and pushing many into inadequate living conditions and deprivation.
- 6) Increased corporate takeover of land. Unchecked commercialisation, especially of agriculture, has resulted in large tracts of agricultural land being taken over by corporations at low costs, including for the development of Special Economic Zones (SEZs). This apart from pushing small farmers into landlessness threatens their food security. In semi-

urban and urban areas too, the usurpation of land by large companies for industrial uses, is also increasing thereby contributing to severe housing crises stemming from insufficient availability of land.

- 7) Inaccessibility of credit facilities, leasing and housing finance schemes for low-income populations. Denying such schemes to the masses further prevents them from enjoying their human right to adequate housing and land.
- 8) Indiscriminate and unchecked speculation on land, especially for investment purposes, fuels the escalation of real estate prices, thereby making housing unaffordable for the masses.

The unprecedented large-scale forced evictions being carried out across India are largely linked to these neoliberal policies that have adverse impacts on the most vulnerable members of society, in particular women, children, persons with disabilities and the elderly.

Another factor contributing to homelessness and landlessness is the increasing concentration of wealth and the growing socio-economic polarization of society. Market structures do not favour egalitarian distribution of housing and land. This forces many to reside in substandard settlements or on the hostile streets of urban conglomerates.

Land is being increasingly commodified as an exclusively commercial good available to the highest bidder. This universalising ideology augurs declining perceptions of housing and land as fundamental rights as well as social goods to meet human needs. Land is not being defended as a means of sustaining human rights of all though it is inextricably linked to individual and community rights to natural resources, livelihood, food, health, and economic and social security.

The scenario presented here indicates a withdrawal of responsibility by duty holders, despite the clear obligations mandated in international and national human rights law.

Manifest Violations of the Human Right to Adequate Housing and Land

Homelessness

Homelessness, shockingly and sadly is a phenomenon prevalent around the world, even in the most industrialised and richest nations.

Homelessness is perhaps the most visible and most severe symptom of the lack of respect for the human right to adequate housing. It could be the result of a range of factors such as the impacts of economic globalisation, privatisation of essential services, poverty, lack of affordable housing, speculation in housing and land for investment purposes, unplanned urban migration, destruction and displacement caused by natural disasters, conflicts or development projects, slum demolitions and forced evictions, as well as gender discrimination and other factors that increase vulnerability to homelessness.⁵³

In 2001, it was estimated that there were 20 - 40 million homeless people in urban centres worldwide.⁵⁴ Widely accepted definitions of homelessness underline that “homelessness carries implications of belonging nowhere rather than simply having nowhere to sleep.”⁵⁵

Houseless Households in India		
Houseless Households	Number of Households	Population
Rural	259,742	1,164,877
Urban	187,810	778,599
Total	447,552	1,943,476

Source: Census of India 2001

Homelessness is often a result of human rights violations in diverse forms, including social exclusion and discrimination on the basis of race, colour, sex, language, national or social origin, birth or other status.

53. See Report of the UN Special Rapporteur on adequate housing, Miloon Kothari, 3 March 2005, E/CN.4/2005/48. <http://daccessdds.un.org/doc/UNDOC/GEN/G05/117/55/PDF/G0511755.pdf?OpenElement>

54. *The State of the World's Cities*, United Nations Centre for Human Settlements (UN-HABITAT), Nairobi, 2001.

55. *Strategies to Combat Homelessness*, United Nations Centre for Human Settlements (UN-HABITAT), Nairobi, 2000.

Although the state of being homeless presents an undeniably harsh and unforgiving reality for anyone, it is certain groups, such as women, children, and persons with disabilities and those living with mental illness, who tend to experience more acutely the adverse impacts of the lack of adequate shelter. Homeless women are not only exposed to the increased risk of illness and starvation associated with life on the street, but also heightened vulnerability to physical and sexual violence. Furthermore, though the majority of the homeless population is undoubtedly male, the actual number of homeless women tends to be grossly underestimated. Homelessness exposes women to an additional range of physical and emotional dangers. The poor sanitary conditions on the streets and in shelters for the homeless create health risks for women. Yet, shelters for homeless women are grossly lacking. In Delhi, for example, existing shelters could only accommodate 100 of the city's 10,000 homeless women in 2006.

The phenomenon of landlessness is closely linked to that of homelessness, because the denial of rights to communities to own, access and make productive use of land and other natural resources prevents them from realising their right to adequate housing. The legal guarantee of a right to land, either through ownership, tenancy, lease or other arrangement, is generally a precondition to the right to adequate housing.

Even though the homeless and landless account for a large part of the population, the implementation of legal provisions to recognise, guarantee and protect their rights is missing. Worse is the rising trend of violence against them coupled with a tendency to criminalize them.

Homelessness in Delhi

The widespread prevalence of homelessness in India's capital city, New Delhi, is a matter of national shame. What is even more horrifying is the failure of the city and central government to firstly acknowledge and then address the crisis. The most recent official effort to document the extent of homelessness in Delhi occurred in 1991 as part of the Census of India.

According to unofficial estimates, there are nearly 100,000 homeless on any given day in Delhi, and there are, at any given time, 10,000 homeless women. At present, however, there are only 12 permanent shelters in Delhi, which at maximum capacity, offer accommodation to 6,200 individuals, leaving the remaining 94% to fend for themselves on the streets of Delhi. Of these, only three shelters are available for use by homeless women which, at maximum capacity, are capable of accommodating roughly 100 women, or 1% of Delhi's total estimated population of homeless women.

An examination of the conditions of existing permanent night shelters further elucidates both the gross negligence of the Municipal Corporation of Delhi (MCD), the New Delhi Municipal Council (NDMC) and the Government of Delhi, as well as their continued derogation from the responsibility to help care for the most vulnerable segments of society. These shelters are characterized by a state of general disrepair and, in the most egregious of cases, are grossly inadequate and unsanitary. Forced to use these shelters due to a lack of available alternatives, many of the homeless frequently complain of a lack of water, medical facilities, storage facilities, insufficient or inadequately functioning toilets, mistreatment and abuse at the hands of MCD staff and police, and filthy and unwashed bedding.

Source: Housing and Land Rights Network Press Release on Homelessness in Delhi, 11 January 2006 (available at www.hic-sarp.org)

The homeless also find themselves targets of a repressive legal and regulatory framework that — through laws such as the Bombay Prevention of Begging Act, 1959 — aims to push groups that have already endured severe historic marginalisation further to the periphery of society.

Of particular importance is the need for government authorities to address the underlying causes and structural origins of homelessness, for it is by way of such an analysis that the most meaningful and effective strategies may be evolved for coping with this crisis. These may include migration caused by diminishing rural livelihoods and economic opportunities, the lack of equitable land reform, social persecution, development-induced displacement resulting from the construction of dams and other infrastructure-related projects, rural land alienation, forced evictions, drought and famine, domestic violence, and child abuse, to name but a few. Critical to any effort to combat homelessness is the need for a human rights approach to inform both an understanding of its causes, as well as the development of possible short-term and long-term solutions, including specific measures needed to protect the rights of particular groups such as women and children.

Slums and Inadequate Settlements

A “slum” as defined at an Expert Group Meeting by UN-HABITAT and its partners in November 2002 is: a settlement in an urban area in which more than half of the inhabitants live in inadequate housing, and lack basic services. The definition was further refined to make it operational: A slum household is a group of individuals living under the same roof in an urban area who lack one or more of the following five conditions:

- Durable housing
- Sufficient living area
- Access to improved water
- Access to sanitation
- Secure tenure

The widespread prevalence of slums and the rapidly escalating number of slum dwellers across urban settlements reflects a gross failure of the State to provide adequate housing to its citizens. Faced with no opportunities to access affordable and adequate housing and with no available alternatives, a large and rapidly accelerating percentage of urban dwellers across the world find themselves forced to live in adequate conditions, in what are widely known as slums today. While the nature of slums and their characteristics might differ greatly across geographical regions and cultures, the common underlying feature is the difficult social and economic conditions and manifest deprivations that they pose to their inhabitants.

According to UN-HABITAT, there are approximately 998 million slum dwellers in the world today, compared to 715 million slum dwellers in 1990, reflecting an unprecedented rise in the growth of slums. One out of every three city dwellers – nearly one billion people – lives in slums. Most of the slum dwellers in Southern Asia – 63 percent, or almost 170 million people – reside in India.⁵⁶

Mumbai with a population of 18.3 million is the fourth largest urban agglomeration in the world, after Tokyo, Mexico City and New York-Newark. More people live in Mumbai's slums than in the entire country of Norway.⁵⁷

While there is talk of improving the lives of slum dwellers, including the Millennium Development Goals, it is generally more rhetorical than practical and tends to leave out the majority of people living in slums. Demolishing slums, as is the current trend, is definitely not the answer to improving living conditions of the working poor. While slum upgradation must be undertaken in order to guarantee the provision of basic services such as clean and safe drinking water, electricity, sanitation and healthcare, the simultaneous policy focus has to be on addressing structural causes of rural-urban migration, and on

56. *State of the World's Cities 2006/7: The Millennium Development Goals and Urban Sustainability: 30 Years of Shaping the Habitat Agenda*, United Nations Human Settlements Programme, 2006.

57. *Ibid.*, p. 24.

addressing trends of land agglomeration, real estate speculation, unchecked growth of the land and housing market, and the absence of public and social housing programmes sponsored by the state for low income groups. Unless a human rights approach is adopted to address the manifold factors that result in inadequate housing conditions in slums, the majority of city residents will continue to face multiple human rights violations.

Forced Evictions

General Comment No. 7 of the Committee on Economic, Social and Cultural Rights, has defined forced eviction as the, “permanent 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.”

Moreover, it affirmed that forced evictions are *prima facie* violations of the human right to adequate housing, and are a contributing factor to the phenomenon of homelessness. It also encourages State Parties to ensure that “legislative and other measures are adequate to prevent, and if appropriate punish, forced evictions carried out without appropriate safeguards by private persons or bodies.”

It further states that women are particularly vulnerable to forced eviction given the statutory and other forms of discrimination they experience in relation to property rights (including home ownership) or rights of access to property or accommodation, as well as women’s particular vulnerability to acts of violence and sexual abuse when they are rendered homeless.

The UN Commission on Human Rights has also recognized forced evictions as a gross violation of human rights, particularly the right to adequate housing.⁵⁸

“One morning, the police came and threw us out of the shelter by force. The NDMC sweepers beat us up very badly. Small children were picked up and hurled onto the streets. We were all injured and had to be taken to the hospital by people from Aashray Adhikar Abhiyan. Since that day, I suffer from nervous attacks. I am told that relocating slum dwellers is part of a city beautification drive. What kind of beauty will it be, that kills off people to make space for parks?”

Haruna Begum (45 years) who was evicted in October 2004 from Palika Hostel night shelter in New Delhi where she used to sleep after she was forcibly evicted from the slum cluster in which she resided with her children.

58. UN Commission on Human Rights resolution ‘Forced Evictions’, E/CN.4/1993/77.

The new *Basic Principles and Guidelines on Development-based Evictions and Displacement*⁵⁹ build on General Comment 7 as well as on the United Nations Comprehensive Human Rights Guidelines on Development-based Displacement⁶⁰ to address the human rights implications of development-linked evictions and related displacement in urban and/or rural areas. The *Basic Principles* define forced evictions as “acts 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.”

Despite international human rights provisions, brutal forced evictions are being increasingly carried out across India, in particular in urban slums and for “development” projects. Large-scale evictions have been carried out in all major Indian cities including Mumbai, New Delhi, Hyderabad, Chennai, Kolkata, Ahmedabad and Bangalore.

Massive Slum Demolition Drives in Delhi and Failed Resettlement for Slum Dwellers

Estimates from Hazards Centre, New Delhi, reveal that between the years 2000 and 2006, over 100,000 families were forcibly evicted from their homes in Delhi. This amounts to almost over 400,000 people being evicted, the majority of them without any resettlement provisions.

Between January and May 2004, Delhi government authorities displaced 27,000 families from Yamuna Pushta. Of them, only 6,000 families received alternate plots, in an area known as Bawana, 35 kilometres from their original residence site, while the remaining 21,000 families (around 100,000 people) became homeless.

In another calculated and systematic series of events, several slum clusters in Delhi were brutally demolished and bulldozed to the ground between the months of February and May 2006 as part of a much larger scheme of urban renewal and city “beautification.” More than 11,000 families have been rendered homeless in this period, most of whom are forced to fend for themselves on the streets as the government has not provided them with any resettlement or rehabilitation

59. Report of the UN Special Rapporteur on adequate housing, Miloon Kothari, E/CN.4/2006/41, 14 March 2006. <http://daccessdds.un.org/doc/UNDOC/GEN/G06/118/59/PDF/G0611859.pdf?OpenElement>
60. E/CN.4/Sub.2/1997/7, annex.

options. Many families are not offered any resettlement options on the grounds that they are not “legal” and do not have documents, even though they were living on the site for many years, some as long as 35 years. They include residents of Bhatti Mines, Nagla Machi, and Yamuna Pushta.

Nagla Machi, a large settlement of 7000 households along the banks of the river Yamuna was demolished in order to clear the land for a power plant for the Commonwealth Games that will take place in Delhi in 2010. The Supreme Court dismissed a writ petition to stay the demolitions. Often, as in the case of Yamuna Pushta, demolitions are not preceded by prior notification as is mandated. People are not even given time to gather and remove their personal belongings from their homes before the bulldozers destroy them. Violence generally accompanies all demolitions and police sometimes resort to firing in the air to intimidate people.

The inhuman and violent nature of these evictions is further aggravated by a complete lack of alternative housing and rehabilitation measures. People’s homes are completely obliterated, while they helplessly watch on their livelihoods destroyed, as they are moved to relocation sites 40 – 70 kilometres from their place of work. They are not paid compensation for losses incurred as a result of the demolitions and forced relocation to distant sites. Services, including access to education, healthcare, water and food are severely affected. People have no space or facilities to even cook and thus their human right to food is also violated by the state. The evicted are often forced to live on the streets and subjected to further abuse and marginalisation. This course of events violates not just the human right to adequate housing, but also the human rights to livelihood, health, education, water, food, culture, and the right to live with dignity. The situation is much worse for women and children.

The Indian state needs to take measures to put an end to this schema of forced evictions and dispossession rather than abetting and implementing it.

Slum Demolitions in Mumbai and Lack of Government Rehabilitation

“All of us are poor. We cannot rent a house. Everyone is a daily wage worker. On the day of Sankranti, many bulldozers with trucks came. We tried to protest. They abused us. If government had objections to our houses, why did they provide electricity metres?”

Pratibha Prakash Kadam, Vikhroli, Mumbai⁶¹

61. *Bulldozing Rights: A Report on the Forced Evictions and Housing Policies for the Poor in Mumbai*, Indian People’s Tribunal on Environment and Human Rights, Mumbai, June 2005.

As in Delhi, the city of Mumbai has also witnessed brutal slum demolitions over the last few years. In May 2004, the Congress Party, in its Manifesto, promised to regularise slums in Mumbai city built before the year 2000. This promise played a large role in assisting the Congress to come to power in the State of Maharashtra. A few months after the election, the government however declared that all slums remaining after 1 January 1995 would be demolished and the displaced would not be rehabilitated. From November 2004 to March 2005, in a massive demolition drive, the government destroyed an estimated 90,000 homes in 44 areas.

Despite an affidavit submitted by the state government to the High Court that rehabilitation would be provided for all slum dwellers who had come to Mumbai before the year 2000, no official rehabilitation has been undertaken. Furthermore, a survey that was to identify the affected families has not been completed. This led housing rights groups to approach the Courts with a demand for rehabilitation and compensation for property and personal items lost during the demolitions. The High Court of Mumbai did not grant immediate relief but asked the government to constitute a committee that would look into the framing of a policy on housing for the poor.

In practice, however, the city authorities only intensified repression and violence against residents of slums.

The first few months of 2006 witnessed massive and violent demolitions across Mumbai. Many of these sanctioned by the Mumbai government's new urban renewal initiative known as "Operation Makeover," which calls for demolition of all structures resurrected in the aftermath of prior demolitions, and those that have been built on public spaces in order to clear land for infrastructure-related purposes (including shopping malls).

In all demolitions, local hoodlums or police officials accompanied the municipal authorities and engaged in acts of violence against the people, including beating them with sticks. In all sites, injuries were reported, some of them severe. Old and pregnant women and children are also not spared. Often, as in the case of Mahakali Nagar, there is no prior notice or intimation, and authorities bulldoze houses and also confiscate household goods.

The Khar Danda and Indira Nagar demolitions took place just a few days before the Higher Secondary Certificate (Class XII) examinations, thereby leaving students stranded in the middle of the road with no means to study. The move was completely illegal as the informal settlements existed before 1995, which

is the legal cut off date in Mumbai, and much before the year 2000, which is the new declared date concerning slum regularisation of the government. Forced evictions in violation of these policies are highly condemnable. In the case of Indira Nagar, which was first demolished in 2004, authorities poured poisonous sludge over the land to prevent people from returning to the site.

Brutal Demolition and Fire in Mandala, Mumbai

On the morning of 9 May 2006, police and local government authorities brutally demolished and set fire to 5,000 houses in Mandala. A police force of around 500–700 along with Mumbai Collectorate officials and 6–7 bulldozers demolished about 5,000 houses in the slum communities of Indira Nagar and Janata Nagar in Mandala, near Mankurd in Mumbai. Meanwhile, the police easily gained entry into the slum and demolished most of the houses and burned the rest, wiping out the entire community. The fire continued burning for several hours, while fire brigade personnel looked on passively, doing nothing to extinguish the fire.

Furthermore, the police engaged in a brutal “lathi charge,” beating and dragging residents from the demolished site, and destroying their personal belongings. The police assault badly injured three people, including Shamin Banu who suffered a miscarriage after women police hit her in the stomach. In all, forty-five persons received injuries during the demolition and fire.

While municipal authorities gave the residents of Indira Nagar only a 12-hour notice of the demolition, those living in Janata Nagar had no prior notification or information of the demolition and were taken completely unaware. In its wave of oppression, the police abused and beat ten activists from the site, and arrested them under the charge of attempt to murder under Section 307 of the Indian Penal Code, which is a non-bailable offence.

Police fenced the demolition site with barbed wire, and removed all those people who had set up temporary structures for shade thereby subjecting women and children to sit under the scorching sun with no place to go and no provision for alternate housing.

The demolition was completely illegal as the government clearly stated in its affidavit to the High Court that Mandala was reserved for people whose homes were demolished during the 2004–05 drive.

The situation with regard to forced evictions is tragically similar across urban areas in the country. In Hyderabad, between 2003 and 2005, around 10,500

families suffered from forced evictions at the hands of authorities. In Ahmedabad, currently 10,000 households face eviction by the Ahmedabad Municipal Corporation through 11 town planning schemes, while 40,000 families on the banks of Sabarmati river are vulnerable to displacement. In Chennai and Kolkata too, the last few years have witnessed violent demolitions and evictions of the poor from their homes. Construction of highways, flyovers and railway lines, and the development of land for commercial purposes including shopping malls, hotels, and entertainment complexes are the main reasons for involuntary displacement, forced evictions and demolition of homes of the working poor.

The government's trend of targeting informal settlements across the country clearly demonstrates a prejudice of the state against the working classes and a complete lack of respect for human rights and justice.

The continued practice of summary and forced evictions 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.*"

Forced evictions without adequate rehabilitation violate the affected people's fundamental right to life and livelihood as enshrined in Article 21 of the Indian Constitution. Reaffirming the principle of indivisibility of all human rights, the fundamental right to life encompasses the right to live with human dignity. Furthermore, Article 14 of the Constitution of India guarantees equal protection under law.

The authorities 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 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 recognized in international law.

The Government of India should refer to the UN Guiding Principles on Internal Displacement as well as the Basic Principles and Guidelines on Development-based Evictions and Displacement⁶² and adopt relevant guidelines in national

62. Presented in the report of the UN Special Rapporteur on adequate housing, Miloon Kothari, E/CN.4/2006/41, 14 March 2006, at: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/118/59/PDF/G0611859.pdf?OpenElement>

and local policies in order to mitigate the phenomenon of evictions and to ensure adherence with international human rights standards.

Housing and Land Rights in Post-disaster Scenario – Tsunami

Natural disasters such as earthquakes, cyclones, floods, generally tend to destroy people's housing and habitat. The Indian Ocean tsunami of 26 December 2004 rendered around 1.8 to 2.5 million people homeless across several countries. The massive earthquake of October 2005, which affected northern Pakistan and India, similarly left thousands homeless. The loss of family, livelihoods and housing, coupled with forced relocation creates very difficult living situations for survivors of such disasters. Together with the lack of provision of adequate housing—be it in the form of temporary shelters or intermediate housing facilities and delayed reconstruction of permanent housing—survivors of natural disasters often suffer from multiple violations of their human rights, especially their right to adequate housing and land.

Women tend to suffer more as a result of natural disasters, while benefiting less from reconstruction efforts, which are generally gender-insensitive.

*Violation of the Right to Adequate Housing and Land of Tsunami Survivors in Tamil Nadu and Andaman and Nicobar Islands*⁶³

A year and a half after the tsunami, despite the outpouring of aid, living conditions of many tsunami survivors are still abysmal. The failure of involved agencies and actors to adequately respond to the disaster is reason for much concern.

In India, the survivors' human right to adequate housing has been violated in most places in Tamil Nadu and the Andaman and Nicobar Islands, not just by the government, but also by international and other relief and voluntary agencies. Most temporary and intermediate housing shelters were built with poor and inadequate materials, and without consideration for space, location, size, sanitation, security and culture.

The building of structures without consideration for the elements of the human right to adequate housing in order to merely meet an emergency need, proved to be counterproductive while causing further deprivation.

63. See *Post-tsunami Relief and Rehabilitation: A Violation of Human Rights*, Housing and Land Rights Network, New Delhi, August 2005 (http://www.hic-sarp.org/news_show_user.php?id=42), and *Battered Islands: Report of a Fact-finding Mission to Tsunami-Affected Areas of the Andaman and Nicobar Islands*, Housing and Land Rights Network, New Delhi, May 2006 (<http://www.hic-sarp.org/battered%20Island%20Final.pdf>).

While temporary housing in Tamil Nadu was built of a material called “tar sheeting”, in the Andaman and Nicobar Islands tin was used for “intermediate” shelters intended to last for up to two years. In both regions, the materials trapped heat making the shelters completely uninhabitable while limiting ventilation.

Survivors in Tamil Nadu referred to the tar sheet structures as “cattle sheds” as they were completely unfit for human habitation, and violated the dignity and human rights of men, women and children. They complained that the smell of the tar was so nauseating that they could not enter the shelters initially. In some cases, the tar melted and dripped into homes. Due to the intense heat and humidity inside the temporary structures, many women and children had developed boils on their skin and scalps. Tar sheet housing proved to have little resistance against the rain and, everywhere it was used, people complained of leaking roofs and decomposing structures. Several resettlement sites were built in low-lying areas and, therefore, flooded with the slightest rain. Furthermore, women complained that the thin and flimsy tar sheets failed to provide privacy from the next shelter.

In most parts of Tamil Nadu and the Andaman and Nicobar Islands, a line-housing configuration of shelters was the norm for tsunami survivors, with inadequate space, ventilation and location. In the Andaman and Nicobar Islands,⁶⁴ all shelters, irrespective of location and size of family living in them, have been built of tin sheets and are 3 by 5 metres in size. Given the tropical climate of the islands and the intense heat and humidity, tin is the most impractical material possible. People complained that the tin sheds were like “toasters.” The standard shelter design of one single room provided no space for privacy, especially for women. Rain water leaked into the shelters from the sides due to gaps in the walls. The lack of planning in the construction of the shelters was evident from the inadequate space between them, the incomplete partitions between shelters, the poor location of toilets, and the inappropriate position of the drains.

The complete lack of consideration in building these structures reflects more than mere neglect. It reflects an unarticulated conceptual misunderstanding that housing adequate for the poor/ displaced means “slums.” The ideological bias behind such housing design is an issue that requires serious analysis.

64. See *Battered Islands: Report of a Fact-finding Mission to Tsunami-Affected Areas of the Andaman and Nicobar Islands*, Housing and Land Rights Network, New Delhi, May 2006 (<http://www.hic-sarp.org/battered%20Island%20Final.pdf>).

Apart from the poor quality shelters, the greatest problem being faced by people in the Islands was the lack of sufficient drinking water and erratic water supply. Sanitation facilities while integral to maintaining an adequate standard of living were neglected. Rudimentary tin toilets located far from the shelters had been so poorly constructed that they were not being used.

Services including food, water and sanitation for the affected people in intermediate shelters were severely inadequate. With most people still not fully employed after the loss of their livelihoods, and with the suspension of food aid, food was a critical but unmet need of many tsunami survivors. Nutritional intake also suffered in the post-tsunami scenario.

In the Andaman and Nicobar Islands as well as in Tamil Nadu, rehabilitation plans, including housing designs, were developed and implemented without consulting the affected communities or inviting their input in the processes, which is critical to ensuring that the dignity of the survivors is upheld. Since government guidelines for permanent housing do not incorporate human rights standards, there is no guarantee that survivor's right to adequate housing is met. Consultation with communities as well as the provision of formal titles for both women and men over permanent housing that would provide them with legal security of tenure, are critical in ensuring the protection of their human rights.

The right to relief and rehabilitation must be upheld as a human right of all survivors by all agencies and actors, and human rights standards must form the basis of all rehabilitation and reconstruction measures.⁶⁵ Apart from legally binding human rights instruments, there exists a wide range of international declarations, guiding principles and resolutions that are applicable in post-disaster situations. These include: Guiding Principles on Internal Displacement, 1998; Principles on Housing and Property Restitution for Refugees and Displaced Persons; Basic Principles and Guidelines on Development-based evictions and displacement; Declaration on Indigenous Peoples, 2006 and the Inter-Agency Standing Committee's Operational Guidelines on Human Rights and Natural Disasters, 2006. They also lay down standards of operation, such as information, participation, assessment, monitoring and supervision, accountability and international cooperation, which must be incorporated in all post-disaster work.

65. See *International Human Rights Standards on Post-disaster Resettlement and Rehabilitation*, Housing and Land Rights Network and PDHRE – People's Movement for Human Rights Learning, Bangalore, 2006. Available online at: <http://www.hic-sarp.org/Post-Disaster%20Compilation.pdf>. Also see joint statement by UN Special Rapporteur on adequate housing and Representative of the United Nations Secretary-General on the human rights of internally displaced persons, one year after the tsunami at: <http://www.un.org/News/Press/docs/2005/hr4880.doc.htm>.

Apart from states, international and national agencies involved in post-disaster relief and rehabilitation must also abide by international human rights law, irrespective of the country they operate in. Yet, in the post-tsunami rehabilitation scenario, the disregard for human rights law has been glaring, but surprisingly not adequately questioned or condemned

Discrimination against Dalits and Denial of their Housing and Land Rights

Exclusion and discrimination faced by Dalits is a corollary to the graded and iniquitous social system of caste that prevails in Indian society. Almost six decades after independence, Dalits are still denied ownership rights to land. Landlessness among the scheduled castes (SCs – those enumerated in Constitutional annexes, or “schedules”) is a common feature in the Indian rural economy.

Furthermore, the human right to adequate housing for Dalits is not guaranteed. Consequently, the right is not officially respected, protected or fulfilled; notably it is not officially promoted, monitored or reported.

In a typical rural set up in India, Dalits are generally forced to live outside the main village. The eviction of Dalits from their houses is a common form of discrimination, while destruction of their homes, including by burning, is prevalent in certain states.

A survey by the National Sample Survey Organisation (conducted in 2002 and released in April 2006) has revealed that the average value of land owned by Scheduled Castes and Scheduled Tribes (SCs/STs) is less than one-third of what other sections own. The survey also shows a sharp gap in the value of houses owned by SC/STs in the country.

State-wise analysis of landlessness in India brings to the fore that in 1999-2000, the highest numbers of scheduled caste (SC) landless households were found in Bihar followed by Gujarat, Maharashtra, Tamil Nadu and Punjab respectively. It is a historical fact that in Punjab, Dalits have not been allowed to own land due to the existence of a law, which prohibited Dalit ownership of land.⁶⁶

Violence against Dalit women is also linked to the denial of land rights, as in a majority of land disputes, Dalit women are made a target of violence to silence their male counterparts.

66. *Land Rights to Dalits*, National Campaign on Dalit Human Rights (NCDHR), November 2005.

Some of the factors responsible for increasing landlessness among Dalits include:

- Land in the control of ineligible/rich landlords on *benami* (fictitious) names.
- Fraudulent land *pattas* (titles) issued to ineligible persons.
- Forcible eviction from their lands by vested interests of the higher castes.
- *Pattas* issued but non-conferment of ownership rights by the State machinery.
- Tardy implementation of allotment of ceiling surplus and other categories of land.
- *Bhoodan* lands (lands given for redistribution to the landless poor) are still under the possession of the 'voluntary donors' in *benami* names. This is done primarily to evade land ceiling laws.
- Endowment lands are still occupied by the rich land owners. Dalit and Adivasi families living on the endowment land for several years are being dispossessed.
- Fraudulent settlement of land by Revenue officials have also led to large tracts of land remaining under the possession of rich landlords.

Caste Discrimination

In a mass frenzy, reported on 31 August 2005 at Gohana, Haryana, local residents looted, ransacked, and then burned about 55–60 houses belonging to Dalits. Just one day after this incident, another mob burned 25 houses belonging to Dalits at Belkhed, in Akola, Maharashtra. In the aftermath of such atrocities, many Dalits find themselves forced to flee their homes. Punitive action or legal sanction against the perpetrators of such violent and heinous crimes rarely occurs, largely attributable to the connections they enjoy with members of politically prominent and influential upper castes.

Urgent measures need to be taken by the state to ensure that the right of Dalits to land are recognised and upheld, and that those engaging in acts of violence against them or those denying them their rights are held accountable and appropriately tried.

Development-induced Displacement⁶⁷

Displacement has always been carried out in India under the ostensible claim of the “public good” or “public interest”. Similarly, the excuse of “development”

67. Refer to the *Basic Principles and Guidelines on Development-based Evictions and Displacement*, in the Report of the UN Special Rapporteur on adequate housing, March 2006, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/118/59/PDF/G0611859.pdf?OpenElement>

has been used to evict thousands of people from their natural habitats and homes. This paradigm of development at the cost of thousands is increasingly being questioned and challenged. Development which sacrifices the lives of many for the benefits of a few is a perverse notion of development.

Despite resistance from people's movements across the country, including that of adivasis, dalits and other natural resource-dependent populations, the state and corporations, as well as large donors continue to push mega-development projects that threaten the lives and livelihoods of both the rural and urban poor.

Displacement and Submergence of Thousands of Families in the Narmada Valley

The ongoing construction of the Sardar Sarovar Project on the river Narmada is a clear example of this faulty development paradigm. The March 2006 decision of the Narmada Control Authority to raise the height of the dam from 110 to 121.92 metres, apart from violating the Supreme Court orders of 2000 and 2005 and the Narmada Water Disputes Tribunal Award, would result in the loss of lives and livelihoods of over 35,000 families of adivasis and farmers in the Narmada Valley who will face imminent submergence. Despite glaring evidence, including the report of the team of Central Government Ministers, that rehabilitation has not been carried out as per law and policy requirements, the Supreme Court and the state and central governments continue to sanction this project, thereby violating the constitutional and human rights of the affected while subverting principles of democracy and natural justice.⁶⁸

Usurpation of Tribal Lands and Displacement caused by Vedanta Alumina Refinery and Niyamgiri Mines, Orissa⁶⁹

M/S Vedanta Alumina Limited (Vedanta), is establishing a one-million-tonne per annum capacity alumina refinery project together with a 75 MW 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 State, east India. Vedanta is also establishing an associated bauxite mining project at Niyamgiri Hills, Lanjigarh. The project is problematic on various fronts; however, the State of Orissa and the Union of India are failing to intervene in order to respect, protect and fulfil a bundle of human rights, including the core human right to housing and land.

68. See dossier on Narmada Bachao Andolan for more details.

69. For more information on this and other disastrous mining projects in India, see: www.mmpindia.org.

Most importantly, the project involves the displacement of 102 families and threatens pristine forests and the homeland of a highly endangered tribe in the Niyamgiri Hills, the Dongaria Kandha, whose population is less than 6,000. Niyamgiri Hill is a sacred hill for the Dongaria Kandha tribe. The entire tribe, with its unique customs and survival practices, particularly due to their dependence on farming and agro-forestry as the sole source of their livelihood, faces a threat of extinction should Niyamgiri Hill be converted for mining.

According to a 21 September 2005 report of the Indian Supreme Court's Central Empowered Committee (CEC) on Forests, Vedanta had falsified information in order to obtain environmental clearances, destroyed more than 10 hectares of forestland, and had begun construction work at the site before obtaining the requisite clearances under the Forest Conservation Act. Furthermore, the report recommended the revocation of environmental clearances given to Vedanta's aluminium refinery in the Niyamgiri forests in Lanjigarh, Orissa.

The report goes on to imply the complicity of the Union Ministry of Environment and the State government of Orissa in the violations, and mentions that:

The casual approach, the lackadaisical manner and the haste with which the entire issue of forests and environmental clearance for the alumina refinery project has been dealt with, smacks of undue favour/leniency and does not inspire confidence with regard to the willingness and resolve of both the State Government and the MoEF (Ministry of Environment and Forests) to deal with such matters keeping in view the ultimate goal of national and public interest.

The report also highlights several other human rights violations, including the forced eviction of people by the district administration and beating up of villagers by employees of Vedanta. While the National Policy on Resettlement and Rehabilitation requires the provision of land for land following consultation in keeping with principles of due process, particularly in the case of tribals, the company did not comply, and offered cash compensation instead, which is unacceptable to many.

In the face of resistance, the District Collector acted in apparent compliance with company officials, and collaborated in the effort to threaten villagers off their land. An atmosphere of fear was created through the activity of hired goons (who were often responsible for the exploitation of local women), the police and the district administration. Many of the tribals suffered severe injuries. After being forcibly removed, armed guards of Vedanta kept them under vigilant surveillance, and they were not allowed to meet anyone. They were thus effectively rendered prisoners. Apart from land acquired by the District administration from

Bandhagunda and Rengopali villages, Vedanta also illegally took over land, for which no acquisition notice was served, nor any compensation paid.

Orissa government authorities forcibly evicted Kandha tribal families of Jaganathpur Village from land that they have been cultivating for generations, without any compensation or any alternate housing. The eviction took place without any process of verification and is in violation of the special protection provided to Scheduled Tribes. Though the Kandh have petitioned the District Collector against the forcible eviction, the Orissa authorities have taken no action to reduce or protect against deprivations arising from further evictions.

The project also serves to threaten livelihoods and restricts access of villagers to forests and forest produce that they depend on for food and medicine. This has a particularly adverse impact on the Kandha women.

The mining of bauxite in the area is also likely to destroy the water recharging capacity of Niyamgiri Hill and cause desertification of the many perennial streams that originate from the nearby hilltop. Other environmental and health-related concerns arise from the release of noxious and poisonous red mud, which is a mix of highly toxic alkaline chemicals and heavy metals including a radioactive element, all of which could have disastrous public health consequences. The dangerous heavy metals and chemicals also could leach into the ground water and destroy plant life that comes in contact with it. This aspect has been omitted in the recent environment impact assessment and ignored by the MoEF.

Considering the grave human rights violations committed and abetted by the State and Vedanta, CEC's "Recommendations" and "Observations and Conclusions" take on all the more significance. Forced eviction of tribal families from their homes, illegal and violent takeover of private property belonging to tribals, unlawful confinement of local villagers by Vedanta security forces, and the use of police and district administration to suppress dissent, all represent severe human rights violations that warrant immediate investigation and action.

The Company initially stated that there was no forestland involved, which allowed it to get an Environmental Clearance. The Forest Clearance was applied for, which was necessary as the land acquired had already been cordoned off and the compound wall of the company had been raised. Since the CEC pointed out that it was against the Forest Conservation Act, the application for forest clearance was withdrawn. This makes the entire project illegal, yet there is no action against the company, except for insignificant fines to the local authority. The State must immediately establish a mechanism for handing the land back to the communities.

Another negative development on the national front has been the 13th Amendment of the Environment Impact Assessment (EIA) norms. The High Court in Mumbai

ruled that as per EIA guidelines for major building projects, a public hearing must be conducted. Soon after this ruling the central government changed the EIA norms, thereby making it impossible for any large construction project to be questioned on environmental grounds.

Despite the severe indictment by the Central Empowered Committee (CEC) of the Supreme Court, the project continues violating the land and housing rights of the people through falsehood and lack of state oversight.

While a strong peoples' movement against the project is underway by groups such as mines, minerals and People (mm&P), the London Group, and several other national and international networks, and while the CEC report serves to strengthen their claims, strong action against Vedanta needs to be taken in order to bring about the complete cessation of the company's destructive anti-people and anti-environment activities.

Involuntary Displacement caused by the Polavaram Dam in Andhra Pradesh

The Polavaram Irrigation Project on the Godavari River is located in the West Godavari district of the southern Indian state of Andhra Pradesh. According to Andhra Pradesh government figures, the dam will submerge 276 villages and displace 117,034 people. Reports of the Planning Commission and estimates of local groups suggest that the official figure of people to be displaced is a gross underestimation of the actual number that will eventually be displaced. Local activists fear that such underestimation of the number of people to be affected will result in a large number of people being displaced without rehabilitation.

In spite of an explicit requirement of the National and State Rehabilitation Policies to consider non-displacing alternatives, the State government has not provided any information on the alternatives that were considered before finalizing the Polavaram Project. Activists have also criticised the Rehabilitation Plan on the grounds that the population details do not tally with the 2002 Census data. There is also no guarantee that alternative land will be provided to affected families. There is great likelihood that most people will be given only cash compensation for the land submerged. The amount provided for housing in the Plan is not sufficient to construct even the most basic of houses.

The Government has responded to local protests against the Project with force and intimidation.

Without strong opposition to the means by which the Andhra Pradesh State government is pushing the Polavaram Project forward, hundreds of thousands of adivasis and dalits will be displaced without adequate rehabilitation and subjected to intimidation and repression.

Landlessness

Land relations and production processes in India are still largely feudal and patriarchal in nature. Rural India is characterized by caste fragmentation, bonded labour, and continuous takeover of land of small peasants by large corporations and infrastructure development projects, such as road and highway construction, which forcibly displace people. Traditional farming and livelihood practices are largely being threatened by mechanized agriculture and introduction of hybrid seeds and forced conversion of traditional production means. All these factors push small peasants into irreversible situations of landlessness.

The phenomenon of absentee landowners, fragmentation of small landholdings, growing class of landless agricultural workers, and the lack of efficient documentation of landownership or tenancy have further contributed to inequality in land ownership in rural India.

The number of landless rural families has grown steadily since independence, both in absolute terms and as a proportion of the population. In 1981 there were 195.1 million rural workers: 55.4 million were agricultural labourers who depended primarily on casual farm work for a livelihood. In the early 1990s, the rural work force had grown to 242 million, of whom 73.7 million were classified as agricultural labourers.

Land under the Indian constitution is a state subject; thus every state has its own land laws. The Land Reforms (Fixation of Ceiling on Land) Acts were enacted in different states during the 1960s to further the Directive Principles of State Policy, provided under Part Four of the Constitution of India. Article 39 provides that the State should, in particular, direct its policy towards securing that ownership and control of material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment.

The aim of “land reform” was to place a ceiling on the amount of land held by individuals in order to promote equitable ownership and mitigate the phenomenon of landlessness. Lands in excess of the ceiling would fall under government control and were to be redistributed to landless farmers. Despite the intention, in practice not much land has been successfully redistributed. Landlords in collusion with corrupt officials avoided regulations by partitioning land, or illegally transferring it in the names of family members and in fictitious names (*benami*) in order to reduce the size of holdings on paper. A large amount of land lies undistributed due to contested claims in pending cases in courts around the country.

After 59 years of independence, only 1.8% of surplus land has been distributed to the landless and that too mostly in the name of men. The majority of fertile

and irrigated land continues to remain concentrated in the hands of rich peasants and landlords generally belonging to upper castes and the ruling elite. One of the reasons for this inequality in land ownership is the failure to implement land ceiling laws.

The creation of National Parks and Protected Areas under the garb of environmental conservation has also displaced tribals and forest-dependent communities from their land and natural habitat.

Inequality in land ownership coupled with current market policies and financial trends further exacerbates the crisis of landlessness and small-scale agriculture. The growing number of farmer suicides across the country is also a manifestation of the severe agrarian crisis. While it is a cause of extreme concern, it is not being adequately addressed by the state. Over 14,000 farmers in different states of India have committed suicide between 2001 and 2006.⁷⁰ Death is haunting the farmers of Vidarbha region of Maharashtra as well as farmers in the states of Karnataka, Andhra Pradesh and Punjab. These deaths are not the result of a natural disaster, but of policies rammed through with heartless cynicism. They are driven by several factors that include debt linked to a credit crunch, soaring input costs, crashing prices, and a complete loss of hope.⁷¹

While the inequality in housing and land distribution and its disastrous consequences seem to be accepted by the government and states, they are not accepted by the homeless and landless, who are constantly organising and developing local alternatives. Despite organised repression against them, the landless and homeless across the world are engaged in resistance, which ranges from direct action such as occupation of unused land or buildings to effective lobbying.

Struggles for land rights are an integral part of Indian history and of the movement for social justice. Two major peasant uprisings that occurred in India in more recent times were the Tebhaga movement in undivided Bengal in 1946, and the insurrection at Telengana, Andhra Pradesh from 1946-51. Unlike the usually sporadic and spontaneous peasant revolts of the past, both these movements were politically inspired and had a firm organizational basis and practical agenda. The Tebhaga (literally meaning 'three parts') movement demanded a reduction in land owners' share of the crop from one-half to one-third. Although primarily launched on economic demands, the rebellion in some areas led to landlords leaving villages to peasants, who then administered affairs in the villages through the Kisan Sabha. For various reasons, the Tebhaga movement finally petered out. The peasant struggle in Telengana (a part of the

70. "Farmer's Suicides in Maharashtra," *Liberation* [central organ of the Communist Party of India (Marxist-Leninist)], June 2006.

71. P. Sainath, "Where India Shining Meets Great Depression," *The Hindu*, 1 April, 2006.

former Hyderabad State) which began in 1946, was against forced labour, illegal exactions, evictions by feudal landlords, among other things and later developed into an agrarian liberation struggle to get rid of feudal landlordism.

The rise of naxalism and Maoism is a direct outcome of inequalities in land ownership and violation of human rights of peasants and other landless workers. Strong people's movements exist across rural and urban India to assert rights to natural resources and housing, be they in Kalinganagar (Orissa), in the Narmada Valley or in Chhatisgarh. Slum dwellers' movements such as Ghar Bachao, Ghar Banao Andolan in Mumbai, and Sajha Manch in Delhi are examples of strong and successful organised campaigns for housing rights. The struggle, however, is long and difficult, especially with all odds seeming to be against the poor and working classes.

Brazil's Rural Landless Workers' Movement – MST: Making Agrarian Reform a Reality

With 50% of land being held with 1% of the population in individual holdings, the largest being the size of Belgium, Brazil has the world's worst inequality in land ownership. While 5 million families do not have access to land, an estimated 60% of farmland is permanently idle. Frustrated with government apathy and the tyranny of landowners, MST was created in 1984 as a grassroots people's movement that organized to advance agrarian reform as a principal theme on the national political agenda. Agrarian reform consists not just of land redistribution and democratisation of access to land, but involves fundamental socio-economic-political change that sustains cooperative means of production, promotes social welfare, and consolidates the rights of citizens. Rooted in the belief that only mass struggle will bring about agrarian reform, MST has thereby emancipated itself from the state. Its core organizing principles **include:** collective leadership; discipline; study and pedagogy; and a strong grassroots base.

A key MST strategy to dismantle land hegemony is the 'occupation' of idle land. The premise of such occupations is Article 184 of the Brazilian constitution, which stipulates that rural land not meeting its "social function" can be expropriated for purposes of agrarian reform.

Though the movement has faced repression of the worst forms by the state and land mafia, including murder of its activists and violence against the landless, it continues to exert people's rights to land and agrarian reform in a country that is 80% urban. Over the last 21 years, MST has managed to gain legal recognition of land rights for over 300,000 families.

For more information on the MST, see: www.mstbrazil.org

Recommendations

Inequities in land ownership, widespread prevalence of landlessness and homelessness, and the inadequate and dire housing and living conditions of the majority of India's population, call for much to be done in the arena of housing and land rights. Strategies need to be developed and implemented in order to first address the structural causes of both homelessness and landlessness, such as unemployment, forced evictions and displacement, involuntary urban migration and domestic violence, and second, to address and resolve the existing crises that homelessness and landlessness create.

Some of the recommendations to national and state governments include:

- Introduce public housing schemes for the poor;
- Implement land ceiling laws and investigate cases that have obstructed the redistribution of land already ceased by the government as being in excess of ceiling land;
- Prioritise land and agrarian reform;
- Initiate strong implementable rural development and employment schemes, including through the National Rural Employment Guarantee Act to prevent forced migration to urban areas;
- Address homelessness and inadequate housing conditions in both rural and urban areas;
- Introduce feasible and low interest credit schemes for both women and men farmers;
- Promulgate laws that protect women's rights to adequate housing and land, for instance, introduce Government Orders mandating joint registration and joint titles for marital property in the names of men and women, and registration of women's property in the names of single women;
- Initiate measures to check against excessive land and real estate speculation and to control the growth of the land mafia;
- Create sufficient and adequate shelters for the homeless in urban centres;
- Create separate shelters for homeless women and children;

- Develop a comprehensive rehabilitation policy and a policy that checks against forced evictions and displacement;
- Develop and implement a comprehensive housing policy that addresses the issues of slums adequately;
- Ensure that international law is implemented and that national laws and policies adhere to international human rights standards.

Advocacy Options

While the ground reality with regard to the human right to adequate housing and land is grim, and while there are a number of ongoing initiatives and actions underway, a lot more needs to be done in order to strengthen the housing and land rights movement and effect reform.

For students there are several advocacy options available that could be pursued at various levels to promote the human right to land and adequate housing.

Some of the possibilities include:

- Direct Action – rallies, protests, petitions, signature campaigns
- Lobbying government officials – writing letters to, and meeting with, relevant officials
- Joining existing campaigns to promote the human right to land and adequate housing
- Attending and organising public hearings, seminars, conferences
- Raising awareness on these issues in the mainstream media
- Spreading awareness among students through leaflets, brochures, and articles
- Contacting local groups for volunteer options
- Fundraising for projects working with street children and the homeless
- Using artistic expression — music, dance, street theatre — for developing social awareness and resistance.

Check Your Progress

1. Discuss the obligations of the State towards realization of the right to adequate housing as laid down in the international human rights instruments.
2. Write a short note on the human rights to adequate housing and land and its relation with other rights especially the children right citing various case laws.
3. Critically analyze the judgment of Supreme Court of India in Madhu Kishwar V. State of Bihar, (1996) 5 SCC 125 in light of the Article 51 of the Constitution.
4. Discuss the India's legal obligations with respect to right to adequate housing.
5. Discuss the jurisprudence developed over two decade by the Supreme Court cases and its impacts on right to adequate housing and land.
6. Write a short note on National Habitat and Housing Policy, 1998 and National Policy on Resettlement and Rehabilitation, 2004.
7. Critically analyze the statement that the forced evictions are prime facie violation of human right to adequate housing especially in relation with slum dwellers.
8. Discuss the effect of development of induces displacements on human right to housing and land and tribal rights citing various Indian developmental projects.

Sources of the Human Right to Adequate Housing and Land in International Human Rights Law

Binding Instruments

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

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

Article 12, Universal Declaration of Human Rights, 1948

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 17, International Covenant on Civil and Political Rights, 1966

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

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

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

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

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

- (e) Economic, social and cultural rights, in particular:
 - (iii) The right to housing;

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

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

Article 27, Convention on the Rights of the Child, 1989

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
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 case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Article 16, Convention on the Rights of the Child, 1989

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

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

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

Guidelines/Principles/Declarations

General Comment No. 4 ‘The Right to Adequate Housing’ (Art. 11 (1) of the Covenant), Committee on Economic Social and Cultural Rights, 1991.

General Comment No. 7 ‘The Right to Adequate Housing: Forced Evictions’ (Art. 11 (1) of the Covenant), Committee on Economic Social and Cultural Rights, 1997.

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

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

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

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

United Nations Declaration on the Rights of Indigenous Peoples, 2006

Declaration on Social Progress and Development, 1969 General Assembly resolution 2542 (XXIV)

- 10 (f) The provision for all, particularly persons in low-income groups and large families, of adequate housing and community services.
- 18 (d) The adoption of measures to introduce, with the participation of the Government, low cost housing programmes in both rural and urban areas;

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

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

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

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

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

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

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

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

Part II 1. The improvement of the quality of life of human beings is the first and most important objective of every human settlement policy. These policies must facilitate the rapid and continuous improvement in the quality of life of all people, beginning with the satisfaction of the basic needs of food, shelter,

clean water, employment, health, education, training, social security without any discrimination as to race, colour, sex, language, religion, ideology, national or social origin or other cause, in a frame of freedom, dignity and social justice.

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

B. Adequate Shelter for All

1. Introduction

61. Since the adoption of the Universal Declaration of Human Rights in 1948, the right to adequate housing has been recognized as an important component of the right to an adequate standard of living. All Governments without exception have a responsibility in the shelter sector, as exemplified by their creation of ministries of housing or agencies, by their allocation of funds for the housing sector and by their policies, programmes and projects. The provision of adequate housing for everyone requires action not only by Governments, but by all sectors of society, including the private sector, non-governmental organizations, communities and local authorities, as well as by partner organizations and entities of the international community. Within the overall context of an enabling approach, Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing. These actions include, but are not limited to:

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

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

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

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

- 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (b) Basic shelter and housing;

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

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

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

Section II (Objectives of National Housing Policy), paragraph 2: It should be an objective of national [housing] policy to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that adequate and decent housing

accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent.

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

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

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

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

Basic principles and guidelines on development-based evictions and displacement, March 2006 (Commission on Human Rights, E/CN.4/2006/41)

The Practice of Forced Evictions: Comprehensive Human Rights Guidelines On Development-Based Displacement, adopted by the Expert Seminar on the Practice of Forced Evictions Geneva, 11–13 June 1997

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

- 2.5 States should pursue inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land use, and, as appropriate, land reform policies - all of which will permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labour, capital and management, and encourage conservation and sustainable management of natural resources including in marginal areas.
- 8.10 States should take measures to promote and protect the security of land tenure, especially with respect to women, poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance

land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities.

Draft Declaration on Human Rights and the Environment, 1994

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

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

Over-riding Human Rights Principles

Indivisibility of Human Rights

“All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights;

The full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development.”

—Vienna Declaration and Programme of Action (1993)

Self-determination

The extent to which concerned individuals and communities are able to exercise an effective role in determining the terms by which all elements of their right to adequate housing are realized.

Non-discrimination

Article 1 of Convention on the Elimination of all forms of Discrimination against Women (CEDAW) states that any distinction, exclusion or restriction made on the basis of sex which has “the **intention or effect**” of “nullifying or impairing” the “recognition, enjoyment and exercise” by women of all rights in the social, cultural, political and economic spheres constitutes discrimination. This can manifest as:

- Differential treatment leading to non-recognition of human rights of women both in the private and public sphere (direct discrimination);
- Differential treatment preventing women from exercising their human rights both in the private and public spheres, (direct discrimination); and
- Equal or gender-neutral/gender-insensitive treatment preventing women from exercising their human rights in the private and public spheres (indirect discrimination).

Other kinds of discrimination women can face include:

- Cross-cutting discrimination – discrimination in one area may lead to discrimination in other areas (e.g. denying girl children access to health may also prevent them from going to school);
- Historic discrimination – women may be suffering from the effect of past discrimination;
- Intersectional discrimination – women experience the compounded effect of simultaneous discrimination on the basis of gender and other factors such as race, ethnicity, class, age, disability, sexual orientation etc.

The UN Special Rapporteur on Adequate Housing's 2002 Report (E/CN.4/2002/59) contains guidelines for States for ensuring freedom from discrimination with regard to the human right to adequate housing.

Gender Equality

Women and men are guaranteed the enjoyment of equal human rights under international law. The substantive equality model applied in CEDAW (Art. 2) emphasises the need for both equality of opportunity (*de jure*) and equality of results (*de facto*), the goal being the practical realisation of women's rights. This approach recognises that in order to redistribute benefits equally between women and men, approaches to promoting women's rights must transform the unequal power relations between women and men in the process. For this to happen, policies, laws and programmes must aim to provide:

- Enabling conditions (i.e. the social, economic and cultural contexts within which women may be able to lead their lives with dignity);
- Affirmative action (i.e. temporary special measures that recognise and accommodate women's needs in the context of employment, education, financial services, politics and all other spheres of life, in order to enable women to overcome both historical barriers as well as those that arise from male domination of the system. (Art 4.1, CEDAW)

Therefore, the prerequisites of gender equality are:

- Equality of opportunity (law, policy and programmes);
- Equality of access;
- Equality of benefit;

State obligations⁷²

Three levels of State obligation with regard to human rights:

- Respect – to abstain from violations;
- Protect – to prevent violations from occurring;
- Fulfil – to facilitate and provide for the realisation and free exercise of rights through legal and policy measures.

Core minimum obligations

- To immediately address the basic housing needs of the population.

Progressive Realisation

- The concept of “progressive realisation” imposes upon States a clear obligation to take measures as expeditiously and effectively as possible to provide for the full realisation of the human right to adequate housing.

Non-retrogression

- To refrain from undertaking any measure deliberately or flagrantly in retrogression of legal obligations under international and human rights treaties, especially the practice of forced evictions.

International Cooperation

- “Solidarity and fraternity” dimension of State obligation;
- No action or policy may be adopted that may inhibit the ability of States to comply with their human rights commitments vis-à-vis their citizens;
- The international community has an obligation to remove any impediments to the achievement of compliance with their human rights obligations among developing nations.

72. For further details on State obligations see the Maastricht Guidelines on Violations of Economic Social and Cultural Rights, as well as General Comments and findings of Treaty Committees.

Annexure – III

Selected text of recent orders passed by the Delhi High Court and Supreme Court relating to human rights to adequate housing and land⁷³

M.C. Mehta Vs Union of India W.P. (C) No. 4677/1985

(This order led to the eviction of Bhatti mines (Indira Nagar and Balbir Nagar))

Date: 07/12/2005

Justice: Chief Justice, C.K. Thakker and I.K. Balasubramanyan JJ

Court: Delhi High Court

In matters except I.A. No. 1207 in I.A. No. 22 in W.P. (C) No. 4677/1985:

Mr. D.C. Khanduri, Deputy Conservator of Forests-cum-Secretary, Ridge Management Board, filed in this Court, in I.A. No. 18 in Writ Petition (C) No. 4677 of 1985, an affidavit dated 8th April 1996, inter alia, stating that the chief Secretary of the Government of N.C.T. of Delhi undertook a visit of Sanjay Nagar, Balbir Nagar and Indira Nagar J.J. clusters in Bhatti area and Gaon Sabha land at Jaunapur on 6th April, 1996 along with officers of various organisations connected with the shifting of the population. After considering the work involved, ground conditions, topography of the area, weather conditions and various administrative and financial requirements, the time-frame to shift the population as worked-out by the Slum and J.J. Department, was approved by the Chief Secretary as given in Annexure-A, which is a report of the Committee constituted by the Government of N.C.T. of Delhi for identification of land for relocation of Jhuggies (slum dwellers) from Jaunapur and Bhatti mines Ridge areas. The report mentions about the feasibility of the land in Jaunapur and the availability of adequate vacant land (about 63 acres of land). On 9th April, 1996, considering the affidavit and the report as also the time required for the clearing of the ridge area of Bhatti mines, this Court directed that all teh encroachment from the area of ridge must be shifted before 31st October, 1996. The court, in the order dated 9th May, 1996, noted the statement of Mr. Khanduri that the work of relocation of J.J. Dwellers of Ridge has already been undertaken on war footing. Further, it appears that possession of 61 acres of land was

73. Compiled by Hazards Centre, New Delhi, May 2006.

handed over by the Block Development Officer to the Delhi Government on 14th May, 1996. In terms of the order dated 21st November, 1996, the time for shifting was extended up to 31st March, 1997. The Chief Secretary of the Government of N.C.T. of Delhi and the Chairman of the Ridge Management Board filed an affidavit dated 1st April, 1997 seeking extension of time to complete the process of shifting the J.J. clusters from Southern Ridge up to 31st October, 1997.

To say the least, it is a matter of anguish that despite lapse of about nine years and the orders above-referred, the Ridge has not been cleared of J.J. clusters. It does not appear that any order was passed by this court extending the time as sought in the affidavit of the Chief Secretary. Further, it deserves to be noticed that the order dated 21st November 1996, directed filling of monthly reports. It seems that even that direction has not been complied with. No report has been shown to us. Apart from the affidavit dated 1st April, 1997 of the Chief Secretary, no application has been filed by the Government of N.C.T. of Delhi seeking extension or the change of location, except the affidavit filed for the first time in response to I.A. No. 1821. The substantive application (I.A. No. 1882) was filed on 14th October, 2004, seeking modification of the order dated 9th May, 1996 and permission to shift the encroachers to Bawana Industrial area.

We have perused the affidavit of Mr. A.S. Khullar dated 31st August, 2002 filed in response to I.A. No. 1821 as also the averments made in I.A. No. 1882. The affidavit and the application hardly contain full particulars and details as to why the Government should be permitted to change its position and allowed to shift to a place other than Jaunapur. In fact, as already noticed, no affidavit or application was filed and the only affidavit filed for the first time after a period of five years was in response to I.A. No. 1821. Though the affidavit and the application make a mention of some reference made to NEERI but neither the date of when reference was made nor the reasons for reference nor the report has been filed. However, having regard to the facts and circumstances of the case, we permit, and rather direct, the Chief Secretary to file a detail affidavit date-wise and chronological-wise stating as to what transpired from 1st April, 1997, i.e., date when the Chief Secretary filed the affidavit afore-noted, till the filing of the affidavit by Mr. Khullar on 31st August, 2002. Along with the affidavit, the Chief Secretary shall file all supporting documents. The affidavit shall also state as to the present status of land at Bawana in respect of which permission is sought for shifting of J.J. clusters from Bhatti mines as also the status of the land at Jaunapur, as above noticed. The affidavit shall be filed within two weeks.

List these applications in the month of January 2006.

De-link the interlocutory applications.

Maloy Krishna Dhar Vs GNCTD (WP 6160/2003)

(This case led to demolition of three bastis in I.P. Extension)

Date: 21/09/2005

Justice: Vijender Jain, J.

Court: Delhi High Court

On 21.4.2004, the Court passed the order in the following terms:

It is also brought to our notice that there are two jhuggi clusters existing there and they have encroached upon the DDA's land lying between Anand Lok CGHS and Sahyog Apartments comprising of about 125 to 150 jhuggis. There are another 45 jhuggis on DDA land in front of the local shopping centre of DDA. It is submitted that these jhuggi clusters can only be removed by DDA after sufficient relocation plots become available for which it is stated that the Commissioner is not in a position to take any decision in the subject matter. We direct the respondent DDA to relocate the jhuggi clusters within a period of two months and provide alternative sites to the jhuggi dwellers in accordance with law and the policy.

Thereafter the order was passed on account of non action on the part of the DDA in terms of aforesaid order. On 14.7.2004, the Court expressed its anguish that no action has been taken by the DDA in spite of the direction given by the Court. The Vice Chairman of DDA was directed to place on record the explanation failing which he was directed to remain present in the Court. Thereafter, it seems that affidavit by Vice Chairman was filed on 21.7.2004. In the affidavit it was inter alia prayed by the Vice Chairman of the DDA that six months time may be given to do the needful. However, vide order dated 15.9.2004, the Court granted two months time for removal and relocation of jhuggis. No steps have been taken by the DDA to comply with the direction of this Court in terms of their own affidavit filed on 21.7.2004. Notice of the application has not been issued although the same was filed on 14.3.2005. This application deserves dismissal at the outset. Having filed an affidavit by the Vice Chairman, inter alia praying for a time of six months which in terms of that affidavit expired in January 2005, DDA ought to have taken action in terms of their own affidavit. By not taking any action in terms of the order dated 21.4.2004, Vice Chairman of DDA is in contempt of the order passed by this Court. We would like to again re-emphasise, DDA is a monopolistic organisation dealing with the land in Delhi. The land having been acquired, compensation thereof having been given by public money contributed by tax payers, it has no business to allow the land to be grabbed by any encroachers. It is their statutory obligation to see that nobody should squat upon the land which has been put at their disposal in

terms of the DDA Act. The pleas taken by the DDA that in view of some policy of relocation it cannot remove unauthorised occupation amount to giving premium to unscrupulous elements in the society as on the one hand an honest citizen has to pay for a piece of land or flat and on the other hand on account of illegal occupation on the Government land an encroacher is given premium by giving him a plot in the name of relocation. Anyhow, we are not dwelling much on this aspect of the policy as said policy is not before us.

We issue notice of contempt to Vice Chairman of DDA to answer the quantum of punishment. In the meanwhile, we direct the removal of jhuggis in view of the affidavit dated 21.7.2004 filed by Vice Chairman, within a period of 15 days forthwith. Any assistance required by the police shall be provided by the Commissioner of Police.

There is no merit in the application.

The application filed by DDA stands Dismissed.

Navniti CGHS vs. Lt. Governor (WP (C) 5697/2002)

(This case led to demolition of Indira JJ Camp, Parparganj)

Date: 16/08/2004

Justice: Sanjay Kishan Kaul, J.

Court: Delhi High Court

The petitioner had filed the writ petition aggrieved by encroachment of the open green areas, refusal of the respondent DDA to allot the green areas for maintenance by the petitioner society, construction of the school by respondent No. 4 and for maintenance of the adjacent areas where flats of the petitioner society are constructed.

In so far as allotment to the school of respondent No. 4 is concerned, the allotment is for a nursery school out of the area earmarked for other community facility (OCF). In view thereof, learned counsel for the petitioner does not press this relief.

As far as the issue of vacant green land to be allotted to the petitioner for maintenance purpose is concerned, the letter dated 24.10.2002 of DDA itself states that the same can be done as per the normal norms and practices. It is, thus, directed that representative of the petitioner shall visit the Director (Horticulture), North on 30.08.2004 at 11.00 a.m. when the said representative will be informed of all the formalities to be completed and the necessary

formalities shall be completed within a maximum period of one month and documents executed in favour of the petitioner by DDA.

The last issue relates to what is claimed by DDA to be the remaining land for OCF, which is being encroached upon and not allotted as yet. It is not disputed that the area is to be allotted by DDA. Thus, DDA must ensure that encroachment on the said area is removed and even if for maintenance purpose, the same had been handed over to MCD, DDA and MCD shall jointly take action to ensure clearance of the area and the needful be done within a maximum period of three months from today. If there is any other encroachments in and around the area of the petitioner society, the same should also be removed within this maximum period of three months from today.

Compliance report be filed within 15 days of expiry of the three months with advance copy to learned counsel for the petitioner.

The writ petition is disposed of with the aforesaid directions.
Dasti to learned counsel for the parties.

Hemraj Vs Comm of Police WP (C) No.3419/1999

(This led to demolition of Nagla Machi)

Date: 14/12/2005

Justice: Vijender Jain, J.

Court: Delhi High Court

It is shocking that in spite of our orders passed way back on 21.12.2001 when it was observed by the Committee appointed by this court that on T-Junction from Pragati Maidan going towards NOIDA on the left side after turning on the main ring road unauthorised occupants have encroached upon the valuable land and have opened commercial shops. The unauthorised occupants also have buffalos and other animals which not only give way to unhygienic conditions but also create hindrance on the smooth flow of commuters on the ring road of Delhi which are in thousands. We issued directions to the Engineer in Chief, PWD to identify as to who was to take action for removal and report to the court on the next date of hearing. That direction has fallen on deaf ears of the Engineer in Chief of PWD. Even after four years of the passing of the said order, no action has been taken in spite of the fact that the court on several other occasions have passed directions for removal of unauthorised occupants from this place.

On 8 February 2002 again an order was passed by this Court. The relevant portion of which reads as under:-

Regarding removal of encroachment on the Ring Road near 'T' Junction on Ring Road Bhairo Road Crossing, Mr. Shali has contended that steps have been taken to ensure that encroachment shall be removed abutting the road and the area will be fenced so as to prevent further encroachment. However, he says that other encroachment is on the MCD land and it is the Jhuggi cluster which the MCD has propped up. If that is so, a direction is issued to the Commissioner MCD to take immediate steps to remove the said encroachment by the Jhuggi cluster. It is shocking that on the main arterial road of Delhi, i.e. the Ring Road unauthorised encroachment is allowed. Electricity connection been given. Dhabas and other commercial activities are allowed by the authorities. On the one hand, tax-payers monies spent on widening the road and on other hand illegal encroachment is allowed for commercial benefits. The same has to stop forthwith. On the next date of hearing the steps taken to remove these encroachment should be filed on an affidavit by the Commissioner of MCD as well as Chief Engineer, PWD.?

In spite of the above order passed on 8.2.2002 nothing was done by the authorities. An application (CM no.3459/2002) was filed by the Northern Railways, inter alia, stating that the Northern Railways along with their counsel inspected the site in question on 19.3.2002 to inspect as to whether the encroachments are on the land of Northern Railways and after inspection it was pointed out by the Railways that the site in question was found not belonging to the Railways and it was not the Railway land. Thereafter when this court took up the matter on 17.5.2002, learned counsel appearing for the Govt. of NCT stated that the land was allotted to DVB by DDA. We had observed at that time that if the land was with the DVB, how the same was allowed to be used by unauthorised occupants who were not even using the same for shelter but for commercial activities. We had directed the Govt. of NCT to immediately remove such encroachment and a direction was also issued to the Commissioner of Police to provide necessary assistance to the Govt. of NCT as well as to the DVB for implementing the orders of this Court. Action taken report was to be filed before this court.

In our order dated 28.8.2002 we had inter alia, observed as under:-

The Court appreciates the steps taken by PWD and other authorities in fencing the area at 'T' Junction Bhairo Road. However, in spite of spending public funds by erecting a wall and putting barbed wire fencing it seems that people who are inside that wall, have broken the wall and barbed wire fencing.

A direction is issued to the Commissioner of Police to ensure that action is taken against such persons who are responsible for breaking the wall as same

amounts to destruction of public property, necessary action be taken, culprits be brought to book and authorities to ensure that such breaking of wall and cutting of barbed wires be not repeated in future. Cases against such persons shall be registered after investigation within two weeks. After action has been taken by the police, PWD will restore the wall in its original position. Police authorities as well as other authorities shall ensure that no hawker or any other person sit, for the purpose of selling, dwelling, or any other purpose on the road and the space which has been cleared by the PWD. Immediate compliance be made by all concerned?

All these directions were flouted with impunity.

Now it seems that the Committee appointed by this court again took up this matter for consideration on 11.11.2005 and we are astonished to see that the Committee without going into the orders passed by this Court from time to time have again referred the matter for some discussion. The report of the meeting of the Committee, which was held on 11.11.2005, is that the meeting was convened by Principal Secretary (PWD) on 2.12.2005. The representative of the Northern Railways was also called and that the matter will be looked into on priority basis in consultation with PWD officers and to discuss with his superiors and to fix a joint inspection. Such an exercise is nothing but mockery of the implementation of the orders passed by this Court. Neither the Committee nor authorities have cared to read the earlier directions which we have reproduced above in our order. We had appointed the Committee to assist this Court but if this kind of assistance is given then it will only create more problems than solve. In spite of clear-cut directions for removal, when Northern Railways have also stated that the land in question does not belong to them and it was on record that the land belongs to erstwhile DVB, which was given to them by DDA, the non-compliance of the directions for removing the encroachments in this area amounts to wilful disobedience of the orders passed by this Court. We have also observed that encroachment is abutting on the ring road which is an arterial road being used by thousands of commuters going in vehicles from West to East and North to South and vice-versa.

Non-compliance of directions passed by this Court for the last four years tantamounts to abdication of responsibility of the authorities apart from wilful disobedience of the orders resulting in unauthorised encroachment continuing to remain where they were. In these circumstances, we issue notice of contempt to Commissioner of Police, Engineer-in-Chief of PWD as well as Special Secretary (Power), Govt. of NCT as to why action for committing contempt of the orders passed by this court be not initiated against them, returnable on 1.2.2006.

Ram Rattan & ors Vs Comm of Police & ors (CC 3732/2006)

(SLP filed to stay order of demolition of Nagla Machi)

Date: 09/05/2006

Justice: Ruma Pal and Markandey Katju JJ

Court: Supreme Court

The petitioners are given three weeks time to vacate the premises in question. The respondents who appear on caveat will retain a list of those persons who are bona fide pre 1998 occupants and allotment of alternative accommodation will be made to them as and when available.

The SLP is disposed of accordingly.

Using the UN System

All UN treaties have a separate *Treaty Body or a Committee* to monitor the performances of the states that have ratified/signed it. The main purpose of treaty bodies is to collect and review country reports every five years of the states that are a party to the treaty. The States parties are expected to submit comprehensive reports to the Committees.

Written submissions regarding violations of housing rights in a country can be in the form of:

- Drafting a Parallel Report that provides the committee with alternative information to that submitted by your government. *These reports must be submitted according to guidelines for preparing a parallel report.*
- Fact sheets providing the committee with specific information on a particular issue.
- List of issues that can be prepared.

Requirements for filing an Individual Complaint

- The author and victim must be subject to the jurisdiction of the State against which they are petitioning.
- The complainant must be a victim of a human rights violation by the State, or in the case that the victim may not represent himself, the complainant must be a close relative of the victim.
- The complainant must have exhausted all domestic remedies (to the extent that they are effective, available, and not unreasonably prolonged).

Complaints should include the following:

- Name, address and nationality of the victim (and author if appropriate).
- Justification for acting on behalf of the victim (if appropriate).
- Identification of the state against which the complaint is being made.
- Steps taken to exhaust domestic remedies.
- A statement that no other international body is dealing with the same matter.

- A detailed description of any facts substantiating allegation, including relevant dates, etc.

Oral Communication with Treaty Bodies

NGOs can also attend Committee sessions in Geneva and can make oral statements while there. The committee sets aside the opening day of each session for this purpose. During the review of your country, one can also speak with committee members to raise the issues of concern.

Name of the Treaty or convention	Name of the Treaty Body
Convention on the Rights of the Child (1989)	Committee on the Rights of the Child (CRC)
International covenant on Economic, Social and Cultural Rights (1966)	Committee on Economic, Social and Cultural Rights (CESCR)
International Convention on the Elimination of all forms of Racial Discrimination (1965)	Committee on the Elimination of all forms of Racial Discrimination (CERD)
Convention on the Elimination of all forms of Discrimination against Women (1979)	Committee on the Elimination of Discrimination against Women (CEDAW)
International Convention on Civil and Political Rights (1966) (ICCPR)	The Human Rights Committee
Convention Against Torture	Committee on Torture

Thematic Mechanisms

The United Nations Thematic mechanisms consist of a number of Special Rapporteurs, Representatives, Independent Experts or working groups appointed usually by the UN Commission on Human Rights to look at specific types of human rights violation wherever in the world they occur. At present there are 22 thematic mechanisms covering a range of human rights violations. They determine which human rights violation fall within their mandate, analyze their occurrence and cause and comment on institutional aspect of national legislation and international standard.

Some of the mechanisms can also receive individual cases i.e. they will act on complaints received from individuals, NGOs, governmental organizations and other UN institutions or offices.

Some Online Resources

Office of the High Commissioner for Human Rights:

<http://www.ohchr.org>

Special Rapporteur of the Commission on Human Rights on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context:

<http://www.ohchr.org/english/issues/housing/index.htm>

Habitat International Coalition:

<http://www.hic-net.org>

Housing and Land Rights Network:

<http://www.hlrn.org>

Housing and Land Rights Network, South Asia Regional Programme:

<http://www.hic-sarp.org>

United Nations Human Settlements Programme:

www.unhabitat.org

Human Rights Law Network:

<http://www.hrln.org>

Hazards Centre:

<http://www.hazardscentre.org>

Mines, Minerals and People:

<http://www.mmpindia.org>

YUVA:

www.yuvaindia.org

Friends of the Narmada:

<http://www.narmada.org>

HAQ: Centre for Child Rights:

<http://www.haqcrc.org>

National Campaign on Dalit Human Rights:
www.dalits.org

National Alliance of People's Movements:
www.napmindia.org

Asian Coalition for Housing Rights:
<http://www.achr.net/>

Centre for Housing Rights and Evictions (COHRE):
<http://www.cohre.org>

Shack/Slum dwellers International:
<http://www.sdinet.org/home.htm>

Links to Key International Human Rights Documents

International Convention on the Elimination of All Forms of Racial
Discrimination, 1965
<http://www.ohchr.org/english/law/cerd.htm>

International Covenant on Economic, Social and Cultural Rights, 1966
http://www.unhchr.ch/html/menu3/b/a_cescr.htm

International Covenant on Civil and Political Rights, 1966
http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

Convention on the Elimination of All Forms of Discrimination against Women, 1979
<http://www.ohchr.org/english/law/cedaw.htm>

Convention on the Rights of the Child, 1989
<http://www.ohchr.org/english/law/crc.htm>

General Comment No. 4 'The Right to Adequate Housing' (Art. 11 (1) of the
Covenant), Committee on Economic, Social and Cultural Rights, 1991
[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+4.En?
OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+4.En?OpenDocument)

General Comment No. 7 'The Right to Adequate Housing: Forced Evictions' (Art. 11
(1) of the Covenant), Committee on Economic Social and Cultural Rights, 1997
[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+7.En?
OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+7.En?OpenDocument)

General Comment No. 15: 'The right to water' (Art 11 and 12), Committee on
Economic, Social and Cultural Rights, 2002
[http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e9
4?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94?Opendocument)



NATIONAL HUMAN RIGHTS COMMISSION

Faridkot House, Copernicus Marg

New Delhi | 110 001, India

Tel: 23385368 Fax: 23384863

E-mail: covdnhrc@nic.in

Website: www.nhrc.nic.in