

Acts of Commission Acts of Omission

Housing and Land Rights and the Indian State

A Report to 
The United Nations Committee on
Economic, Social and Cultural Rights

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Movement) ■ National Campaign for Dalit Human
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Workers ■ Navsarjan Trust ■ Youth for Unity & Voluntary Action

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Aashray Adhikar Abhiyan, Andhra Pradesh Dalitha Bahujana Vyavasaya Vruthidarula Union, Citizens Initiative, Food First Information and Action-Network, Kalpavriksh, Mines, Minerals & People, Narmada Bachao Andolan (Save Narmada Movement), National Campaign for Dalit Human Rights, National Forum of Forest People and Forest Workers, Navsarjan Trust, Youth for Unity and Voluntary Action

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HABITAT INTERNATIONAL COALITION

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Introduction

India became a State party to the International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR) on 10 July 1979. Although Articles 16 and 17 of the ICESCR require State parties to submit periodic reports on "the measures they have adopted and the progress made in achieving the observance of the rights recognized" in the Covenant, India is now three reports overdue in submitting to the Committee on Economic, Social and Cultural Rights (hereafter the Committee). This despite the instructions in Article 51 of the Constitution of India, which the Supreme Court of India asserts is a requirement for legislative and executive conformity to the principles established in international covenants.¹ In light of this negligence in reporting, as well as concern over noticeable failures on the part of the Indian government to fulfill, respect, promote and protect the economic, social and cultural rights of its citizens, Youth for Voluntary Action (YUVA), Kalpavriksh, Citizens Initiative, the Save Narmada Campaign, the National Campaign for Dalit Human Rights, Navsarjan Trust, the Andhra Pradesh Dalitha Bahujana Vyavasaya Vruthidarula Union (APDBVVU), Mines, Minerals & People, Aashray Adhikar Abhiyan, Food First Information and Action-Network (FIAN), and the National Forum of Forest People and Forest Workers (NFFPFW) have collaborated through the coordination of Habitat International Coalition-Housing and Land Rights Network (HIC-HLRN) to present this civil-society report.

This is the fourth in a series of alternate reports to the Committee in order to draw attention to the grave situation of the right to adequate housing in India. It is hoped that this effort will encourage further communications between the Committee and the Government of India, in turn galvanizing the expeditious submission of India's long overdue report. As noted in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, "The effectiveness of the [Committee] depends largely upon the quality and timeliness of reports by States Parties."² The contributing organizations intend to serve the review process through this initiative, providing information that will contribute to the Committee's effectiveness and the ultimate implementation of the Covenant in India.

¹ Article 51 of the Constitution of India states that, "The State shall endeavour to ... [f]oster respect for international law and treaty obligations in the dealings of organized people with one another." The Supreme Court has declared that this provision enjoins the State to meet its international obligations.

² Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights [hereinafter Limburg Principles], at para 74, U.N. Doc. E/CN.4/1987/17 (1987).

The Right to Adequate Housing

Definition

This report focuses on the human right to adequate housing as a component of the right to an adequate standard of living, contained in Article 11(1) of the ICESCR.³ In keeping with the opinion of the Committee as expressed in General Comment 4, the authors of the present report understand "adequate" housing to include: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.⁴

Additionally, the collaborating organisations approach the right to adequate housing from a perspective that stresses the indivisibility and congruency of all human rights.⁵ This includes congruent rights such as the right to livelihood (Article 6), the right to food and water (Article 11), the right to health (Article 12), freedom from discrimination (Article 2(2) and other applicable international instruments), and the Government of India's attempts at progressive realization of the human right to adequate housing as required by Article 2(1).⁶ As further noted in General Comment 4:

"[T]he right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments...The full enjoyment of other rights—such as the right to freedom of expression, the right to freedom of association...the right to freedom of residence and the right to participate in public decision-making—is indispensable..."⁷

Forced Evictions

The report uses the definition of "forced eviction" given in General Comment 7: "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."⁸ This can include displacement due to large-scale development projects. According to the CESCR and the Commission on Human Rights, forced evictions constitute a prima facie violation of human rights. General Comment 7 states, "[I]n view of the nature of the practices of forced evictions, the reference to Article 2(1) to progressive achievement based on the availability of resources will rarely be relevant. *The State itself must refrain from forced*

³ Article 11(1) of the International Covenant on Economic, Social and Cultural Rights [hereinafter ICESCR] states, "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."

⁴ Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing [hereinafter General Comment 4], at para 8, U.N. Doc. HRI\GEN\1\Rev.1 at 53 (1994).

⁵ See Maastricht Guidelines on Violations of Economic, Social and Cultural Rights [hereinafter Maastricht Guidelines], at paras 4-5.

⁶ It is important to note that the Committee on Economic, Social and Cultural Rights has interpreted this obligation to mean that States parties must give effect to its provisions as "expeditiously as possible" and that deliberate retrogression is a violation. Furthermore, resource constraints do not in any way eliminate a State's obligation to fulfill these rights (see Committee on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties obligations [hereinafter General Comment 3], at paras 10-11, U.N. Doc. HRI\GEN\1\Rev.1 at 45 (1994).

⁷ General Comment 4, at para 9.

⁸ Committee on Economic, Social and Cultural Rights, General Comment 7, The right to adequate housing: forced evictions [hereinafter General Comment 7], at para 4, U.N. Doc. E/C.12/1997/4 (1997).

evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions."⁹

The Committee views legislation against forced evictions as "essential" to a legal system that provides adequate protection.¹⁰ Where forced evictions are unavoidable, the Committee identifies the following procedural protections as necessary: (a) opportunity for "genuine" consultation with affected individuals; (b) adequate and reasonable notice; (c) information on the proposed evictions to be made available in "reasonable time" to those who will be affected; (d) government officials or their representatives should be present during the eviction; (e) identification of all persons carrying out the eviction; (f) evictions should not take place during particularly bad weather or at night; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who need to seek redress from the courts.¹¹

General Comment 7 requests state parties to submit information relating to: (a) "the number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction;" (b) "legislation concerning the rights of tenants to security of tenure, to protection from eviction"; and (c) "legislation prohibiting any form of eviction." Information is also sought regarding measures taken during urban renewal and other redevelopment projects to protect individuals from eviction or guarantee new housing.¹²

Monitoring

The Committee's General Comment 4 on the right to adequate housing states:

"Effective monitoring of the situation with respect to housing is another obligation of immediate effect...In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee emphasize the need to "provide detailed information about those groups within...society that are vulnerable and disadvantaged with regard to housing."¹³

Bearing in mind the non-discrimination clause of Article 2(2) of the ICESCR, this report provides an overview of the situation of seven groups that have been particularly vulnerable to violations of the right to adequate housing in India: urban slum dwellers, the urban homeless, forest dwellers, rural Dalits, victims of the 2002 riots in the State of Gujarat, communities displaced due to large-scale development projects, and nomads. The primary data is based on in-depth civil society reports and other documentation available upon request from HIC-HLRN. The authors of the report take the perspective, shared by the Committee, that consideration of a country as large and diverse as India necessitates a focus either on urgent situations or on specific communities that may be vulnerable to violations of their rights. Several of the groups considered in this report fall into both categories. When taken together, the findings suggest a consistent failure to fulfill the State's obligations with respect to the right to adequate housing, which in turn leads to deteriorating living conditions and deepening impoverishment for millions of people in India.

⁹ General Comment 7, at para 9.

¹⁰ General Comment 7, at para 9.

¹¹ General Comment 7, at para 16.

¹² General Comment 7, at paras 20-21.

¹³ General Comment 4, at para 13 (citation omitted).

Domestic Protections for the Right to Adequate Housing

Following is a brief overview of legal guarantees of the right to adequate housing in India. Due to the complex and diverse nature of the issues discussed in this report, it is not possible to provide an overview of the legal context for each of the situations highlighted. It should be noted that India lacks legislation prohibiting forced eviction.

The Right to Adequate Housing

Although the right to property has been removed from the set of fundamental rights protected by the Constitution through legislative amendment,¹⁴ the right to adequate housing is recognized and protected as a subset of other fundamental rights. Article 21 provides that no person be deprived of his or her life and personal liberty. Reaffirming the principle of indivisibility of all human rights, the fundamental right to life encompasses the right to live with human dignity.

The Supreme Court of India in *Francis Coralie v. The Union Territory of Delhi* has ruled:

"The fundamental right to life, which is the most precious human right and which forms the arc of all other human rights, must be interpreted...[to] enhance the dignity of the individual and the worth of a human person...We may 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 the head."¹⁵

This expansive vision of the right to life and human dignity is reiterated in *Chamelli Singh and Ors. v. State of U[tta]r P[radesh]*, which upholds the "[r]ight to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and *shelter* [emphasis added]."

The right to personal liberty prohibits the unlawful interference or the physical coercion of any citizen without reasonable and legal justification. Following, every individual has the right to live without the physical threat of dispossession and arbitrary invasion of their private space. This guarantee against forced eviction must be read concomitantly with the freedom to reside and settle in any part of the territory of India, as embodied in the Indian Constitution's Article 19.

¹⁴ 44th Amendment Act, 1978. Because the right to property is not a fundamental right, any person deprived of property in contravention of the law has limited means of redress against the government, including judicial contestation in the Supreme Court and right to compensation.

¹⁵ (1981) 1 SCC 608.

However, many forceful evictions result from the fact that communities are unable to gain and secure legal tenure to their homes or properties. Therefore it is important to note that protection from forced eviction also emanates from the right to life as a component of the right to livelihood. The right to livelihood also has been interpreted as integral to the right to life.¹⁶ In the same vein, the Supreme Court has recognized the close nexus between eviction and the right to life in *Olga Tellis v. Bombay Municipal Corp.*:

"Eviction of the petitioners from their dwellings would result in deprivation of their livelihood... 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...there is 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 an integral component of life."¹⁷

Vulnerable Communities

Article 14 of the Constitution of India is a guarantee of equal protection of the laws.¹⁸ This is a guarantee of substantive equality, so read by the courts as an obligation of the State to take affirmative action in providing facilities and opportunities for the disadvantaged.¹⁹ More significantly, Article 15 directly addresses the principle of equality by prohibiting discrimination on the grounds of religion, race, caste, sex or place of birth and makes provision for the special protection of Scheduled Castes and Tribes. Read together, these provisions not only prohibit the exclusion of those marginalized from basic housing needs and land rights, but also implicate State action in redressing these deprivations.

Under the Fifth Schedule of the Indian Constitution, individual states may enact laws that aim to provide substantive equality to members of the Scheduled Castes and Scheduled Tribes. For example, 1956 Orissa Regulation No. 2 prohibits the sale of immovable property by any member of the Scheduled Tribes unless it is made in favour of another member of the Scheduled Tribes or with the previous consent in writing of the competent authority.

The Indian Constitution empowers the government to give effect to directive principles of state policy, and Article 46 in particular aims at the promotion of educational and economic interest of scheduled castes, scheduled tribes, and other weaker sections. For example, the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act 1978 aims to provide for acquisition of land for welfare schemes for Dalits.

The 73rd and 74th amendments to the Constitution, which guarantee the powers of the Panchayat Raj, recognize the right of Gram Sabhas (village councils) to control natural resources.

The Indian Constitution has also been interpreted as directing the state to administer "distributive justice". "Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to marry, etc. It also means that those who have been deprived of their properties by unconscionable bargaining should be restored their property. All such

¹⁶ *Narendra Kumar v. State of Haryana JT* (1994) 2SC 94.

¹⁷ (1985) 3 SCC 545.

¹⁸ The State shall not deny to any person equality before the law or equal protection of the laws within India.

¹⁹ *Panchayat Varga Shramaji Samudaik Sahakari Khedut Cooperative Society v. Haribhai Mevabhai A.I.R* 1996 S.C. 2578.

laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources."²⁰ For example, in *Lingappa Pochanna vs. State of Maharashtra*, AIR 1985 SC 389, the Supreme Court upheld the power of the Maharashtra Restoration of Lands to Scheduled Tribes Act 1975 to annul transfers made by scheduled tribes to non-tribals and restore them on certain conditions.

Relevant National Policies

Following are some of the national policies that are relevant for the fulfillment of the right to adequate housing in India: Draft National Slum Policy, 2001; National Housing and Habitat Policy, 1998; National Policy on Resettlement and Rehabilitation for Project Affected Families, 2003; the Shelter and Sanitation Facilities for the Footpath Dwellers in Urban Areas (Night Shelter Scheme); and the Government of India 10th Five Year Plan (2002-2007).

²⁰ M. J. Antony, *Dalit Rights: Landmark Judgements on SC/ST/ Backward Classes* (Indian Social Institute: New Delhi, 2000), at 54.

Forced Evictions of the Urban Poor

Most of the urban poor²¹ in India live in slums. Slum settlements are often of high density, but can be located in all different areas of a city. Slum houses are usually permanent or semi-permanent structures built on government land. The residents' source of livelihood is usually near their homes in the city centre; men often work as labourers in small and large industries, while most women serve as domestic help in nearby middle class houses. Families living in slums typically make a significant contribution to the economic activity of the city. Since most slums are close to the middle class colonies, they have access to transport facilities, schools, electricity and water.

The majority of slums within a city are "illegal" from the point of view of city planners. The Slum Areas (Improvement and Clearance) Act (1956) states that the authorities may declare an area to be a slum area when, based on a "report from any of its officers or other information" it is determined that the buildings in an area are in "any respect" unfit for human habitation or "detrimental to safety, health, or morals."²² Based on these broad criteria, the authorities may then declare such an area to be a slum area by notification in the Official Gazette. (It should be noted that residents of areas that are *de facto* slums by virtue of these criteria, but are not so notified, may not be able to have access to services and *in situ* improvements as provided under the Slum Areas Act.) The slum is then available for a number of "improvements" such as construction, clearance, and redevelopment.

In the case of slum clearance, the power to declare a slum area a clearance area stems from the vague precondition that authorities are "satisfied" that demolition is the "most satisfactory method of dealing with the conditions in the area." Thus although the Act's purpose was to improve the housing conditions, it has frequently been interpreted as giving license to demolition and eviction. Affected communities are then forced to seek other housing, which is unlikely to be an improvement from their initial dwellings, or may be relocated to sites that are wholly inadequate from the standpoint of criteria for fulfillment of the right to adequate housing.

²¹ This section on the urban poor uses material from Habitat International Coalition - Housing and Land Rights Network, Restructuring New Delhi's Urban Habitat: Building an Apartheid City? (HIC-HLRN 2002), and Usha Ramanathan, Habitat International Coalition - Housing and Land Rights Network, "The Human Right to Adequate Housing in India: A Report to the Committee on Economic, Social and Cultural Rights" (HIC-HLRN Draft Report, May 2003) [hereinafter HIC-HLRN Draft Report].

²² Slum Areas (Improvement and Clearance) Act (1956), 3(1)(a)-(b).

City	Slum population	Total population
Chennai	747,000	4,216,000
Delhi	3,000,000	9,817,000
Kolkata	458,000	1,490,000
Hyderabad	601,000	3,449,000

Source: Census interim report, 2001.

The Eviction Pattern

Forced evictions consistently violate slum dwellers' rights to adequate housing in the main cities of India. During the past four years, municipal authorities have evicted many people living in slums and sent them to the outskirts of cities on the pretext of beautification or development of the cities. Often no notice was given to affected people. Evictions were carried out at odd hours, and people were unable to rescue their possessions from their homes. Victims of these forced evictions did not know where they would be sent, if anywhere, or what the land they were being evicted from would be used for.

Relocation sites have often been in deserted areas where women and children feel insecure. They lack basic facilities such as electricity, drinking water, transport and schools. There is no source of livelihood and people have to travel long distances at great costs to get to their place of work at the centre of the city. Schoolchildren, whose studies are clearly disrupted by evictions, are among the most severely affected.

In 2003 the National Forum for Housing Rights, India published a report on eviction patterns in seven cities in India.²³ Excerpts from the study reveal that eviction and demolition drives are a part of a planned exercise in several different cities in India.

Chennai

On 27 July 2002, authorities, with use of the police force, demolished over 2,300 homes (out of a total of 7,000) in Nilangarai Canal Puram, in Chennai.²⁴ The National Forum for Housing Rights report states:

"Many of the demolished houses were not slums, but concrete houses of low-middle income group who were earning Rs. 4000 to Rs. 6,000 per month...The residents said that they are living here [for] the last 20 years leading quite decent lives and they are apprehensive of the day...when their houses will be bulldozed. Many families have spent Rs. 60,000 to Rs. 100,000 to build these homes."²⁵

One eyewitness estimated that there were 20 bulldozers, 1,000 Rapid Action Police Force personnel with arms, and 50 trucks from the police department. He stated, "They came at 6:00 AM... and evicted them without giving time to remove their belongings."²⁶ He added that the residents became frightened upon seeing the size of the police force. The belongings of the evictees were loaded in trucks and dumped at far-away relocation sites.

²³ Sushil and Rajeev John George, National Forum for Housing Rights India, *Eviction Watch India: A Report on Evictions in India's Major Cities* (Combat Law Publications 2003) [hereinafter *Eviction Watch India*].

²⁴ See *Eviction Watch India*, at 32-39.

²⁵ *Eviction Watch India*, at 33.

²⁶ *Eviction Watch India*, at 33.

Mrs. K. Gyanaprakasam, a member of an elected body of her local ward of Nilangarai Canal Puram, stated that at 10 PM on 26 July 2002, the police announced by loudspeaker that the people should vacate their homes before evictions started at 6 AM the following day. According to her the eviction was executed with brute force and the few residents who resisted were arrested. The police and bulldozers started razing walls and brought down concrete residences.

Pallikaranai, one of the slum relocation sites chosen by the Tamil Nadu Slum Clearance Board, is unfit for habitation. It is adjacent to the Alandur dumping ground used by the local authorities to dispose of Chennai city garbage. The waste that is burned includes tyres from a nearby Ford plant. Many individuals who were relocated to Pallikaranar are reportedly suffering from acute bronchitis and tuberculosis. Due to the proximity of the dumping ground, there have been several incidences of fire. Surplus people have been relocated here since 1993, although to date there is a drinking water shortage and the site lacks a drainage system. The National Forum for Housing Rights Report states:

"Tamil Nadu Slum Clearance Board had handed the responsibility to a nearby village Pallikaranai Panchayat Union (PPU) for supplying water. They have paid Rs. 500,000 for this purpose. But the residents complain that they are getting water only once a week. Site bore wells are also drying up. Streetlights are non-functioning. The entire site is built on marshy land and because of this groundwater is not potable. Transport bus services are few and those that pass from here do not stop."²⁷

Other forced evictions that have occurred in Chennai include: the demolition of 300 houses in Indira Nagar colony on 18 January 2002 and the forceful relocation of residents of Sathianagar in April 2000 after a suspicious fire incident occurred. As suggested by the events in Sathianagar, in Chennai conspiring to commit arson has become an increasingly common method of evicting resistant slum dwellers from locations that local authorities and investors find desirable. Similar incidents have been observed in New Delhi, Hyderabad, Mumbai and Indore.

Kolkata²⁸

The National Forum for Housing Rights report states:

"A sizeable number of [Kolkata's] population are living in slums, pavements, beside railway tracks, bridges and canals. Habitable land has not yet been made available to these working class people at an affordable price within the legal framework. The inquiry team found one of the highest displacements from the Calcutta Metropolitan region. Though these working class inhabitants had ration cards and names in the voters' lists. These sections constitute a stable vote bank [for] political parties and yet they are under the threat of multiple forced evictions. There are at present second and third generation of local inhabitants who face a constant threat of evictions."²⁹

One of the most controversial and brutal evictions in Kolkata occurred at Tolly Nala, a canal site that is situated on the southern outskirts of the city. (At present the largest concentration of informal settlements in Kolkata exists next to the city's complex system of canals.³⁰) The authorities evicted 1,400 households on 22 September 2001 without providing any alternate land, compensation or rehabilitation plan. The land was required

²⁷ Eviction Watch India, at 35.

²⁸ See Eviction Watch India, at 40-47.

²⁹ Eviction Watch India, at 41.

³⁰ Eviction Watch India, at 41.

for a Metro Railway extension and implementation of Ganga Action Plan, financed by the Asian Development Bank. The evictions were carried out during the monsoon season, which aggravated the miseries of the evicted men, women and children.

Gurango Biswas, who lived in Tolly Nala since 1978, told HLRN that, on the morning of 22 September 2001, authorities arrived with a demolition squad and announced by loudspeaker that the residents should evacuate the area. It took three days to demolish the whole area, using 1,000 police from the Rapid Action Force. The District Magistrate, a senior executive officer of the government, monitored the demolition. Although residents had received information that only houses within 20 feet of the canal would be demolished, eventually the authorities and police destroyed the entire colony.

Most of the inhabitants of Tolly Nala are masons, daily wage labourers or domestic workers. They paid electricity and water bills, had ration cards, telephone connections and had their names registered on voters lists. The government offered the inhabitants only Rs. 2,500 as compensation, which most of them refused. The State government, in turn, has not taken any responsibility for the rehabilitation of the former inhabitants of Tolly Nala.

A People's Commission on Eviction and Displacement convened on 22 September 2002 in Kolkata. The Commission met with persons and organisations from the following areas: Kulpi, Chandmoni, Falta, Rajarhat, Chandan Nagar, Bela Ghat, Naya Pati, Sarberia, Jambudwip, Birdhum, Tollygunge, Dhakuria, Rail Colony, Tolly Nala, Udayachal and Shaktigarh. The Commission concluded:

"The system is not only colonial; the judicial system is downright pathetic. To say that it is designed for the rich is an understatement. The poor in this country have not the slightest chance of even approaching a court of justice, let alone pursue a case."³¹

Ongoing Evictions in New Delhi³²

In the coming months, between 100,000 and 300,000 people living in Yamuna Pushta, on the banks of the river Yamuna in Delhi, India, will face forced eviction without adequate and equitable resettlement.³³

Ironically, the Yamuna Pushta forced evictions have come as a result of certain Delhi High Court decisions, particularly the *Okhla Factory Owner's Association vs. Government of National Capital Territory of Delhi* (CWP 4441/1994), *Pitampura Sudhar Samiti vs. Government of National Capital Territory of Delhi* (CWP 4215/1995), and *Wazirpur Bartan Nirmata Sangh vs. Union of India* (CWP 2112/2002). These petitions, filed mostly by factory owners and resident welfare associations serving communities adjacent to the slums, essentially asked for the removal of slum clusters from their particular areas. The petitions ignored that the slum clusters were created to house the labour working in these industrial areas as there was no workers' housing provided by the industries. However, the High Court went beyond the ambit of the particular petitions and ruled in November 2002 that all those who had settled in slums anywhere in the city of Delhi after 1990 should be evicted and not given any "free" land for resettlement.

³¹ Eviction Watch India, at 47.

³² This section is based on information gathered by the Visthapan Virodhi Abhyan, a coalition of groups working on housing rights and who oppose the ongoing evictions at Yamuna Pushta.

³³ Official estimates by the Delhi Municipal Corporation state that 19,000 families (about 100,000 individuals) will be displaced. However civil society groups working closely with the residents of the Yamuna Pushta area state that between 250,000 to 300,000 people will be displaced.

The Court's direction came in spite of available evidence that the residents of the slum clusters had no alternative housing options and that government agencies had provided only 35% of mandated housing, and that each "resettled" family was paying Rs. 7,000 for a license to a tiny plot of land for 5 years. Due to public uproar against the ruling, the government was forced to approach the Supreme Court, which stayed the above order in March 2003.

However, in March 2003, the Delhi High Court held another hearing in the original matter and issued a separate order directing the city urban development authorities to remove all unauthorised constructions along the banks of the river Yamuna. There have been four subsequent appeals against this order in both the High Court as well as the Supreme Court and the Courts have summarily dismissed all these appeals. It is important to note that in no case has the slum dwellers' right to be heard been acknowledged by the courts.

One of the grounds for the High Court order for slum removal was encroachment on the Yamuna riverbed. However, the Court ignored other elite (but illegal) structures such as the Akshardham temple, the Metro Rail headquarters, and the Commonwealth Games Village. The second reason given was that the slums were polluting the river. This, again, ignored available evidence from a report on pollution by Hazard Centre, a Delhi based non-governmental organisation working on urban issues. The report pointed out that the total discharge from the three hundred thousand residents of Yamuna Pushta accounted only for 0.33% (one-third of 1 percent) of the total sewage released into the river. Thus suggesting that removal of these slum clusters would not substantially curb pollution.

Slum-dwellers and NGOs working on urban issues in Delhi have reason to believe that the prime land made available from the forced eviction will then be developed for commercial and tourism purposes. That the eviction drive is spearheaded by Mr. Jagmohan, the Union Minister for Tourism further strengthens the argument.

Although the High Court order of March 2002 directed "all authorities concerned" to remove all unauthorised structures including slum clusters and places of worship in the Yamuna bed within two months, the demolition drive began only in early February 2004. Since the demolition drive started a few months prior to India's upcoming general elections scheduled for May 2004, the Election Commission of India, initially, stayed all eviction till elections were completed. However, in a surprising turn of events, the Commission later lifted the stay on evictions in the Yamuna Pushta area.

So far, 50,000 people have been forcefully evicted from their homes. The demolition drive accompanied by a huge deployment of police force has led to widespread protest. Slum dwellers have been forcibly removed from their dwellings and beaten in many instances. In the Kanchanpuri demolition of 23 March, two children were trapped under debris. The children were later rescued by slum dwellers and rushed to the hospital for emergency medical care. On 13 March a child and a forty-year-old man were burnt to death in a fire that started during the demolition in Indira Basti of the Yamuna Pushta. As resistance increases reports of arbitrary arrests and detentions have also been coming in.

As per the order of the High Court on March 2003, less than half of the evictees are entitled to any kind of alternate housing and resettlement. Reports from groups working in the proposed resettlement sites of Bawana and Holambi Kalan point out that resettlement conditions are highly inadequate for the few who are 'entitled' to resettlement. Basic amenities like water and sanitation are also found to be grossly inadequate. Various struggle groups as well as non-governmental organisations, through their reports and publications have pointed out ways in which forced evictions without adequate resettlement also violate congruent rights such as the right to food, right to health, right to education and the right to livelihood. The inadequacy of the resettlement sites and their distance from the city centre makes it almost impossible for the already impoverished slum dwellers to access schools, government subsidized ration shops, hospitals and clinics, and their places of work. Added to this, the lack of proper sanitation and potable water further increases the threat of epidemics.

RECOMMENDATIONS

To the Committee on Economic, Social and Cultural Rights

- Request the Government of India to provide information pertaining to the practice of forced evictions, including information relating to:
 - a) The "number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction";
 - b) "Legislation concerning the rights of tenants to security of tenure, to protection from eviction" and
 - c) "Legislation prohibiting any form of eviction."³⁴
- Request, as further outlined in General Comment 7, information on urban renewal programmes and "beautiful city" campaigns.³⁵

To the Indian Government

- The UN Commission on Human Rights has stated, "the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing."³⁶ This view is further supported by the Committee in General Comment 7,³⁷ the UN Sub-Commission on Human Rights,³⁸ and the UN Comprehensive

Human Rights Guidelines on Development-Based Displacement.³⁹ Thus the central government has an *immediate obligation*⁴⁰ to assure that State governments desist from carrying out demolition of slums and forced evictions in the name of "legality" and "encroachment."

- When evictions do occur, the State must ensure that they are carried out in keeping with international human rights principles, particularly those outlined in General Comment 7. The Government should follow the provisions laid out in the National Policy on Resettlement and Rehabilitation for Project Affected Families (2003). In particular, the Government of India must apply appropriate procedural protections, such as: adequate and reasonable notice for affected persons, information on the proposed evictions and on the alternative purpose for which the land is to be used, alternative housing and resettlement, and provision of legal remedies.⁴¹

- In keeping with its immediate obligation to promote the right to adequate housing, the Slum Areas (Improvement and Clearance) Act 1956 should be read as a regulation for improving the lives of slum dwellers and should not be abused or used to further disenfranchise the urban poor.

³⁴ Committee on Economic Social and Cultural Rights, General Comment 7, The right to adequate housing: forced evictions [hereinafter General Comment 7], at para 20, U.N. Doc. E/C.12/1997/4 (1997).

³⁵ General Comment 7, at para 21.

³⁶ UN Commission on Human Rights Resolution on Forced Eviction, at operative paragraph 1, U.N. Doc. E/CN.4/1993/77 (1993).

³⁷ General Comment 7, at para 2.

³⁸ See UN Sub-Commission on Human Rights resolution 1992/14 (Forced evictions) of 27 August 1992.

³⁹ The Practice of Forced Evictions: Comprehensive Human Rights Guidelines on Development, adopted by the Expert Seminar on the Practice of Forced Evictions Geneva (1997), at para 4.

⁴⁰ See Maastricht Guidelines, at paras 6, 9, 11, 14, 15, 16 and Limburg Principles, at paras 16-21, 72.

⁴¹ See General Comment 7, at paras 16-17.

- The Government of India should adopt the Draft National Slum Policy, which, despite having been prepared almost half a decade ago lies unattended, and adopt legislation against forced evictions. The Committee has clearly acknowledged that these legal steps are essential for realizing the right to adequate housing.⁴²
- The Government should meet its obligation to ensure housing to all (National Housing Policy 1988). The 10th plan document from the Planning Commission of India in 2002 states: "The working group on housing for the tenth plan has observed that around 90 percent of housing shortage pertains to the weaker sections...." (Ch. VI vol. 2).

⁴² General Comment 4, at para 2, and General Comment 7, at para 10.

Lack of Tenure for Forest Dwellers

India's forest dwellers⁴³ have suffered repeatedly because of an inability to gain secure tenure to land. In addition to *de facto* and *de jure* marginalization from social and economic development in India, their precarious situation with respect to the right to adequate housing is due to a confluence of discriminatory practices that stem from the colonial administration of land under British rule, inadequate or flawed legislation, and development and environmental conservation projects.⁴⁴

According to the authors of book no. 3 in the series "Policy that works for forests and people"⁴⁵ it is generally believed that the state owns approximately 90 percent of India's forests, and they comprise approximately one quarter of India's geographical area. The most recent government estimates assert that there are 170,000 villages in India which have forestland use and that these villages support a population of approximately 147 million.⁴⁶ In its mid-term appraisal of the Ninth Five Year Plan, the Government of India (GOI) estimated that forests provide sustenance such as non-timber forest products (NTFP), small timber, fuel wood and fodder to 100 million forest dwellers.⁴⁷ Over half of these forest dwellers are adivasis.

Villages on Forestlands

Under the colonial administration, large amounts of forest were viewed primarily as a source of natural resources in the form of timber produce. Many official forest and *taungya* villages were initially created by the colonial forest administration to promote beggary, or free labour, for commercial forest operations. After India gained independence, much of this land was officially declared "forestland" under the Indian Forest Act. Forestland then came under the administrative purview of the Forest Department, which continued to view forests primarily in terms of their possible economic output. Villages that existed on forestland generally fell into one of two categories.

On the one hand, *taungya* villages had been created by bringing in labourers from other areas and settling them in labour camps during the colonial period. ("Taungya" is a term taken from the Burmese Karen dialect referring to a system of raising forest plantations of several commercial timber tree species in India, that adapted traditional slash-and-

⁴³ In this report, "forest dwellers" is used to refer to all people who live in or derive their livelihoods from land declared to be "forestland" under the Indian Forest Act. Please note, however, that the Indian Government has yet to clearly define the term.

⁴⁴ The following uses material from Inaccessible Livelihoods: A Report on the Economic, Social and Cultural Rights of Forest Dwellers in India (National Forum of Forest People and Forest Workers and Habitat International Coalition Housing and Land Rights Network Draft Report, 2003) [hereinafter Inaccessible Livelihoods].

⁴⁵ Khare, Arvind et al. Joint Forest Management: policy, practices and prospects: India Country Study, International Institute for Environment and Development, 2000.

⁴⁶ Forest Survey of India, State of Forest Report (Forest Survey of India Dehradun 1999). Available at <http://envfor.nic.in/fsi/sfr99/sfr.html>.

⁴⁷ The Planning Commission, Government of India, in its mid-term appraisal of the 9th Five Year Plan 2000.

burn agriculture techniques.) These former labourers were then allotted small plots to farm "in return for their labour." The colonial government initially established labour camps, consisting of landless and marginal farming families from nearby areas, in North Bengal in the 1890s. Post-colonial forest policy resulted in the establishment of villages in other States, including Uttar Pradesh, Uttaranchal, Madhya Pradesh, Chattisgarh, Assam, and Maharashtra. *Taungya* villages continued to be established through the mid-1970s.

Taungya villagers were annually assigned plots of clear-felled forestland and directed to intercrop agricultural crops with trees until the plantations matured. On maturation, agriculture was discontinued and the trees clear-felled to make way for fresh plantations by the Forest Department. Each year *taungya* planters would have to move to establish new plantation plots. When young plantations covered the entire clear-felled area the settlement would then be uprooted and moved to a new clear-felled area to begin the cycle again.

On the other hand, there were villages on the newly declared "forestland" that had been occupied by adivasis for centuries.

The National Forum of Forest People and Forest Workers (NFFPFW) estimates that there are now somewhere between 5000-7000 forest settlements of various categories, including forest villages, and *taungya* villages, with a total population of up to 10,000,000. It is not possible to pinpoint the exact number of villages' state-wise or nation-wide because no comprehensive country-wide survey has ever been carried out. Some states have reliable figures but many do not have any figures. The GOI has stated that it estimates around 5000 forest villages exist in India today.

No Foundation for Tenure

When villages that had existed long before the Indian Forest Act were declared as "forest villages," the land that was being farmed by these villagers was officially declared forestland and the settlements struck off (or not recorded in) the existing revenue records to reflect this. The administration of these villages then fell to state Forest Departments, rather than the Revenue Departments as in the case of most rural settlements in India. The rights to farm the forestlands became privileges that could be taken away at any time and families were reduced to the status of "leasers" from "right holders." Those already farming not only received nothing in return, but also were forced to change their agricultural practices from shifting agriculture, an integral part of their culture and spiritual beliefs, to settled agriculture. There are many examples of such forcible change in Madhya Pradesh and Chhattisgarh.

At the same time, many *taungya* villages and other pre-existing forest villages were left out of the Forest Department survey process.⁴⁸ In some states, the *taungya* planters were assigned family plots exclusively for agriculture and promised title deeds at a later date. However, state Forest Departments had only skeletal agreements with the planters who were original settlers. The population in each village continued to grow after the agreements were drawn, and members of succeeding generations are usually not recognized as holders of the title deeds. Instead, they are considered "unregistered"

⁴⁸ "For instance, the revenue land settlements completed during the 1970s in Orissa did not involve the survey of hilly lands, which are predominantly inhabited by tribal communities (owing to the higher surveying costs it entailed); these were declared state-owned revenue 'wastelands' or forests. In Andhra Pradesh, lands under shifting cultivation, which were lying fallow at the time of forest classification, were declared reserve forests, without recording the rights of the tribal people." (Ashish Kothari, "Forest rights and wrongs", Frontline (23 April 2004)).

and the Forest Department in some states has consistently refused to take responsibility for their welfare. Equally problematic is the fact that families that are officially registered have not been issued title deeds to their homestead and agricultural lands.

Some development schemes effectively exclude the residents of *taungya* settlements, because the settlements are not shown on revenue land records. Thus they lack infrastructure such as roads, schools and hospitals. In many areas *taungya* villages are left out of the census process and even voting rights are denied.

Because of this, the inhabitants of many villages that existed on forestland before the enactment of the Indian Forest Act are nevertheless viewed as "encroachers" in the eyes of the government. Ashish Kothari of Kalpavriksh writes, "Encroachments are a major cause for the loss of forests in India. A variety of people are responsible for this, from land mafia to urban citizens to poor rural families. But many of the tribal and other forest-dwelling communities have been unfairly labelled as 'encroachers'. The fact is that they occupied or were using these lands before they were declared 'forestlands' under the Indian Forest Act, but the traditional occupation and use of these lands by them were ignored."⁴⁹

Furthermore, in the case of the inhabitants of villages officially declared "forest villages," it has become increasingly clear that state governments' operations suffer acutely from a lack of transparency, accountability, and respect for the rights of minority groups that their policies affect.⁵⁰ Thus a crucial distinction has developed between a forest village, whose inhabitants are often socially and economically disenfranchised, and a revenue village, which is—in theory—provided with the infrastructure for basic civil, political and economic empowerment by the State. Many forest dwellers and activists are now attempting to regularize existing forest villages, thereby becoming self-administrated and allowing forest dwellers to gain, among other benefits, legal title to their land. In principle, this has also been accepted by the Government of India, which in its February 2004 circular asked all state governments to expedite the process of converting forest villages into revenue villages. The Supreme Court, however, has stayed the operation of that circular for the time being.

In addition, the process of de-notification of forestland, which facilitates conversion of forest settlements into revenue villages, has been severely hampered by the Forest Conservation Act of 1980. This is because this Act stipulated that non-forestry activities would no longer be permitted on official forestland without the permission of the central government. The land the villagers have been farming and have their homesteads on is officially forestland, and many of the resident families have no legal deeds to their lands.

In September 1990, at the insistence of the Commissioner for Scheduled Castes and Scheduled Tribes (the predecessor of the present National Commission for Scheduled Castes and Scheduled Tribes), the Ministry of Environment and Forests (MoEF) issued a set of six circulars⁵¹ that attempted to address issues faced by forest dwellers in India.

Despite the tentative framework provided by the circulars, the MoEF issued a directive on 3 May 2002 to summarily evict "all illegal encroachment of forestlands in various States/Union Territories" before 30 September 2002. The directive referred only to the

⁴⁹ Ashish Kothari, "Forest rights and wrongs", *Frontline* (23 April 2004).

⁵⁰ See, for example, *Inaccessible Livelihoods*, at 20-21.

⁵¹ Circular No. 13-1/90-FP of Government of India, Ministry of Environment and Forests, Department of Environment, Forests and Wildlife, dated 19 September 1990, addressed to the Secretaries of Forest Departments of all States/ Union Territories.

circular that dealt with encroachments on forestland, automatically transforming thousands of tribals and other forest dwellers to "encroachers" on their ancestral lands. In doing so, it ignored other circulars on crucial issues such as disputed claims over forestland arising out of forest settlement and disputes regarding *pattas*, leases, or grants involving forestland.

The MoEF circular of 3 May 2002 raised a vital policy issue concerning the governance of tribal areas, including scheduled areas. It violated Article 338 (9) of the Constitution, which emphasizes the necessity of consulting the National Commission for Scheduled Castes and Scheduled Tribes "on all major policy matters affecting Scheduled Castes and Scheduled Tribes."⁵² It also appears that the MoEF did not consult with the National Commission on the terms of this provision. This omission is particularly serious because the original MoEF circulars, of 1990, were issued because of the intervention of the Commissioner for Scheduled Castes and Scheduled Tribes with the Indian Government.

This May 2002 circular was superseded by a subsequent circular, which reiterated that the 1990 circulars should be the basis for the process of dealing with encroachments. In addition, the MoEF issued a circular in February 2004 asking state governments to expedite the process of resolving disputed claims to 'forestlands' and to regularize these and other so-called encroachments carried out before 1993. This substantially advanced the earlier cut-off date of 1980, however the February 2004 circular is not in place yet as the Supreme Court has stayed its execution. Despite this encouraging development for forest dwellers in India, the preceding events suggest that a positive solution to the problem of disputed lands will be solved only with the continued vigilance of civil society and concerned groups.

Forced Evictions and Denial of Customary Access to Resources

The political disenfranchisement of many forest dwellers, as well as their lack of access to secure tenure for land, has made them particularly vulnerable to forced eviction in the name of both "development" projects (such as the extraction of mineral and other resources from forestlands) and environmental conservation. As displacement due to mining is discussed elsewhere in this report, this section will focus only on the effects of wildlife conservation policies on forest dwellers.

One of the official strategies for wildlife conservation in India has been the declaration of protected areas. Until recently, the two main categories of protected areas were national parks and sanctuaries, with the former being a strict form where all human activity was to be excluded. These have undoubtedly helped to halt the rapid decline of wildlife and biodiversity in India. However, the model used to declare them has been exclusionary, built on the assumption that people have to be removed if wildlife has to be protected. But even more than actual forced evictions, villagers have been affected by stoppage or curtailment of traditional access to survival and livelihood resources within these protected areas. Many forest areas and other ecosystems have been declared wildlife sanctuaries and national parks under the Wildlife (Protection) Act of 1972. Through this process, there is an intention to turn many inhabited forest areas

⁵² Those subject to affirmative action benefits by a special annex to the Constitution.

into inviolate wilderness areas, free from all human activity. This has greatly facilitated the displacement of people who are dependent on these areas and resources for survival. According to Kalpavriksh it has been estimated that wildlife sanctuaries and national parks have displaced approximately 100,000 forest people to date, although NFFPFW estimates much more than this.

The evictions of forest dwellers clearly violate international and domestic human rights standards. In a majority of cases these evictions have been based on inadequate recording and settlement of customary rights, a process that is supposed to be carried out even as per the provisions of the Wildlife (Protection) Act of 1972. The restrictions on settlements and access to forests and forest produce have also often been strictly enforced before the final legal notification of national parks and wildlife sanctuaries. To make matters worse, the latest (2003) amendments to the Wildlife (Protection) Act have a provision by which sanctuaries and national parks are deemed to be fully notified as soon as the initial notification is done (in the earlier Act, there was a provision for initial intention to declare, after which rights were to be settled, and then final notification was to be issued). According to interviews conducted by independent observers, inhabitants of newly declared protected areas are routinely denied information about plans for declaring forest areas as Protected Areas and about access to livelihoods and rehabilitation measures.⁵³

RECOMMENDATIONS

To the Committee on Economic, Social and Cultural Rights:

- Request the Indian Government to provide all available information on the number of forest dwellers, their location, and their social, economic, and legal position.⁵⁴
- Request the Indian Government to clearly define who they are referring to when it uses the term "forest dwellers."
- Request the Indian Government to provide detailed information on the number of forest dwellers who have been evicted due to conservation projects. This should include wildlife sanctuaries and national parks and the type of compensation and rehabilitation that has been provided. This data should cover all of the issues raised in General Comment 7, Paragraph 21. In particular, the violation of the right to livelihood that results from displacement should be assessed.
- Request the Indian Government to provide information on the implementation of the

Indian Forest Act (1927), Wildlife (Protection) Act (1972), the Forest Conservation Act (1980) and the Land Acquisition Act (1894) with respect to the human rights of forest dwellers.

- Request the Indian Government to provide detailed information on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, with respect to the realization of the right to adequate housing for adivasis living in the forests. The government should also be requested to provide information on state laws that were intended to promote land reforms in favour of forest people. This would include: Bombay Province Land Revenue Code, Chotanagpur Tenancy Act in Bihar, Bihar Scheduled Areas Regulations, Rajasthan Tenancy Act, MPLP Code of Madhya Pradesh, Andhra Pradesh Scheduled Areas Land Transfer Regulation, Tripura Land Revenue Regulation Act, Assam Land and Revenue Act, and the Kerala Scheduled Tribes (Restriction of Transfer of Lands and Restoration of Alienated Lands) Act.

⁵³ See Inaccessible Livelihoods, at 6, 38-39.

⁵⁴ See General Comment 4, at para 13.

In particular, the Government should inform the Committee:

1. To what extent they create any right of action on behalf of adivasis and other forest dwellers who feel that their rights are not being fully realized.⁵⁵
 2. The extent to which the right to adequate housing in the case of adivasis and other forest dwellers is considered justiciable.⁵⁶ *To the Government of India*
- The Government of India must fulfill the right of traditional forest dwellers to have legal security of tenure, while moving to clear forestlands from the clutches of powerful vested interests that have actually encroached.⁵⁷ To this end, the Ministry of Environment and Forests must facilitate the regularization of forest villages.
 - Immediately halt the forced evictions of forest dwellers (other than vested interests) due to development or conservation projects.⁵⁸ Here again...while development projects would come under the purview of the Forest Conservation Act (1980) the

Land Acquisition Act (1894), conservation projects (meant wildlife sanctuaries and national parks) would come under the Wildlife (Protection) Act.

- Involve the adivasis, forest dwellers and forest communities in managing and conserving forests.⁵⁹
- Provide for the full rehabilitation of forest dwellers who have already been evicted, in accordance with international human rights standards and the National Policy on Resettlement and Rehabilitation of Project Affected Families.⁶⁰
- When designing and implementing conservation projects, keep in mind that Articles 1 and 6 of the ICESCR protect the right to work and the right to maintain a means of subsistence, and that Article 2 precludes discrimination of any kind in fulfilling social, economic, and cultural rights. Forest dwellers must not be denied their traditional means of livelihood without due consultation and rehabilitation. Also look at other national and international laws, policies and new developments.

⁵⁵ See Committee on Economic, Social and Cultural Rights General Comment 3, The nature of States parties obligations [hereinafter General Comment 3], at para 6, U.N. Doc. HRI\GEN\1\Rev.1 at 45 (1994).

⁵⁶ See General Comment 3.

⁵⁷ See General Comment 7, at para 8.

⁵⁸ See above discussion of forced evictions as a prima facie violation of human rights norms, at 7.

⁵⁹ See General Comment 4, at para 9 and General Comment 7, at para 6.

⁶⁰ See General Comment 7, at paras 15-17.

Failed Land Distribution for Dalits

Although Article 17 of the Indian Constitution outlawed the status and practice of "untouchability" in 1950, Dalits continue to suffer acutely from the deprivation of economic and social as well as civil and political rights. One can refer to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules of 1995 to understand the magnitude of the human rights violations Dalits continue to face. Significantly, six of the 22 offences it lists are violations of the right to adequate housing: (1) wrongful occupation or cultivation of land; (2) harming land, premises, and water; (3) fouling of water; (4) denial of customary rights of passage; (5) alienating one from his/her place of residence; and (6) destruction of houses.

As noted by Martin Macwan of Navsarjan Trust, "Most atrocities on Dalits have their roots in the ownership and control of land."⁶¹ However, land reforms intended to benefit rural Dalits previously prevented from owning the land they cultivated have been characterized by faulty legislation, weak implementation, and an apathetic State response to resistance on the part of non-Dalit landowners. The caste system gave impunity to the dominant castes to own land and to use Dalits as labourers, which deeply affected the mindset of dominant castes. This situation is characteristic of the insidious form of descent-based discrimination that plagues Dalits in India and is closely linked with numerous violations of Dalits' human rights. In addition, it represents a clear failure on the part of the State and federal government in fulfilling its obligation to protect Dalits' rights to adequate housing.

Gujarat

A 1997 survey conducted by the Navsarjan Trust in the Surendranagar District of Gujarat confirmed that land reform laws, enacted in the early 1960s, have yet to impact the lives of impoverished and socially marginalized rural Dalits in Gujarat. Following completion of the survey, Navsarjan Trust submitted letters to the Collector's Office of Surendranagar District and filed a writ petition for a public interest litigation (PIL) case with the High Court of Gujarat.⁶² The Collector's Office responded with a letter stating that a joint special meeting had been held to discuss the matter of failed land distribution and that "the matter is in progress." The High Court of Gujarat ruled on the PIL in 1999,

⁶¹ The Story of Land Reforms in Gujarat (Navsarjan Trust 1997) [hereinafter *The Story of Land Reforms*], at cover page.

⁶² *Navsarjan Trust Vs State of Gujarat*, Special Civil Application on 2860 of 1999. See *The Story of Land Reforms* by Navsarjan Trust.

stating that land should be given to the affected allottees by 15 June 2000. Three years later, however, the situation remains virtually unchanged.

The Land Tenancy Act of 1948

The Land Tenancy Act of 1948 was designed to enable tenant farmers to purchase the land that they worked on. At the time of its enactment it was estimated that 2.5 million tenants would become landowners in The Greater Bombay State, one of two States comprising what is present day Gujarat. However seven years later, when The Greater Bombay State and Saurashthra combined to form the State of Gujarat, the Act was radically amended. Tenants were given only two options: either immediately buy the land they farmed or forfeit the right for its purchase. According to government records there were 1,300,000 registered tenants at the time. Only 700,000 of these tenants were able to buy land. Navsarjan Trust asserts that tenants faced three major obstacles in purchasing land: (1) they could not afford to pay for the land immediately; (2) they were threatened by landowners and the State did not make any protection available; (3) they were induced by the landlords to give up the right to the land.⁶³ According to conservative estimates, tenants did not claim approximately 1,250,000 acres of eligible land. More than 56,000 tenants submitted their resignations from the land, after which it was passed to the landlords. In all, only 2 percent of those who were eligible ended up benefiting from the Act.

In 1973 the Land Tenancy Act was amended again so that land subject to resignation by the tenants would be given to the government, which was then supposed to distribute it to landless individuals and families. Nothing, however, was done to address the rights that had been violated between 1957 and 1973. In addition, the Act has since been amended 24 times (bringing the total to 26 amendments), resulting in legal confusion that is a serious impediment to any attempts to use it. The amount of land eventually distributed, 1.2 million acres, is less than half the expected distribution amount.

The Agricultural Land Ceiling Act of 1960

The Agricultural Land Ceiling Act attempted to facilitate distribution of land to Dalits and other marginalized tenants by putting a cap on the number of acres of land an individual could own. It fixed the ceiling at 54 acres, after which the surplus would be vested with the government for distribution to the landless poor.⁶⁴ The Act's implementation, however, has been abysmal: of the 1.25 million acres available for distribution, only 127,466 acres (10%) have been distributed to the poor. This is likely related to the fact that, in over thirty years, the government has taken possession of only 154,839 acres of land.

Navsarjan Trust found several reasons for lack of distribution of the land available under the Ceiling Act: (1) the land was encroached by non-Dalits; (2) the government failed to provide *Khatawahi* (legal document conferring ownership) and/or the necessary security so that Dalits could take possession of the land; (3) the government failed to distribute land that was legally declared to be surplus land; (4) possession of the land was slowed by lengthy and expensive litigation in the courts; (5) people were afraid of

⁶³ See The Story of Land Reforms in Gujarat, at 18.

⁶⁴ See The Story of Land Reforms in Gujarat, at 15-21.

physical retaliation on the part of the landowners if they took possession of the land; and (6) the land was given to Dalit cooperatives that had not redistributed the land as originally promised at their inception.

Examples of Poor Implementation

Dalpat Jethabhai, of Laliyad village in Chuda Taluka, was given land under the Land Ceiling Act. However, to reach the land he had to pass through fields owned by non-Dalits, who would not allow entry. The authorities did not sort out the problem of the approach road.

In Nagadaka village in Sayla Taluka, twenty Dalit families are afraid to take possession of land given to them under the Land Ceiling Act because they do not feel physically safe. The Dalits in the village told Navsarjan researchers, "The authorities come and tell us to take possession of the land, but what about our security?"

Surveyors were threatened when they tried to measure land to be distributed to Dalits in Bhoika, Korda, and Ranagadh villages in Limbdi Taluka. Although they attempted twice and were prevented twice from taking the measurements, the authorities did not take action. Eventually the Dalits were given legal documents verifying possession of the land in question, however the land was still not measured when this report was written.

Andhra Pradesh

The Andhra Pradesh Ceiling on Agricultural Holdings Act was enacted in 1961 but, due to poor implementation, was superseded by the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. This newer Act also falls under the purview of the Ninth Schedule of the Constitution of India. A salient feature of the Act is that each family unit of five or fewer persons is to receive a standard holding, and in family units of more than five persons each member will receive 1/5 of a standard holding.

From 5 August 2003 to 25 August 2003, the Andhra Pradesh Dalitha Bahujana Vyavasaya Vruthidarula Union (PDBVVU) completed a house-to-house survey of land distribution to Dalits in 14 districts in Andhra Pradesh.⁶⁵ In this relatively small area they found that there are 102,000 acres of undistributed land. They identified seven categories of undistributed land: (1) land which was occupied by Dalits but the title deed had not been given; (2) the title deed was given but the land was not handed over for possession; (3) the land had been illegally taken from Dalits by dominant castes; (4) the land was being held under fictitious names by members of the dominant castes; (5) the land was in occupation by Dalits but in dispute between the Forest and Revenue Departments; (6) temple lands were given to Dalits but are now under threat of eviction; and (7) the lands are illegally occupied by ineligible members of the dominant castes.

⁶⁵ See Andhra Pradesh Dalitha Bahujana Vyavasaya Vruthidarula Union, Bhoosadhana (draft report 2004).

RECOMMENDATIONS

To the Committee on Economic, Social and Cultural Rights:

- Request the Indian Government to provide detailed information on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and all other legislation designed to promote the human rights of Dalits, with respect to the realization of the right to adequate housing. In particular, the Government should inform the Committee:
 1. To what extent they create any right of action on behalf of Dalits who feel that their rights are not being fully realized;⁶⁶
 2. The extent to which the right to adequate housing in the case of Dalits is considered justiciable.⁶⁷
- Request the Indian Government to provide, as described in General Comment 7, available data on the number of Dalits forcefully evicted within the last five years, whether or not those individuals had legal protection against arbitrary eviction, and whether or not those individuals used the legal mechanisms available to them.⁶⁸
- Request the Indian Government to provide information relating to land reform and violation of the right to adequate housing that is currently available in the reports of the National Commission for Scheduled Castes and Scheduled Tribes.⁶⁹

To the Indian Government:

- The Indian Government has an immediate obligation to oversee the implementation

of the Land Tenancy and Land Ceiling Acts in a manner consistent with their underlying principles. In addition, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 lists wrongful occupation or cultivation of, or dispossession from, land as punishable offences⁷⁰ and must be implemented to its full capacity.

- The Government must take all necessary steps to assure that Dalits have security of tenure of their land. The Government should create legal support structures (like special land tribunals) for deciding land dispute cases between Dalits and non-dalits, and for those whose lands are encroached on by dominant castes to enable them to get justice from the court.
- In keeping with Paragraph 8 of General Comment 4, the Government must remove all obstacles, de facto or otherwise, that prevent Dalits from taking advantage of available community services, materials, facilities, and infrastructure, in particular potable water and appropriate burial grounds. The Government must take particular care in guaranteeing the physical safety of Dalits with respect to fulfilling the habitability requirement of adequate housing.
- As per Paragraph 9 of General Comment 4, the Government must remove all obstacles to Dalits' access to the right to freedom of residence, the right to participate in public decision-making, and the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence.

⁶⁶ General Comment 3, at para 6.

⁶⁷ General Comment 3.

⁶⁸ See General Comment 7, at para 20.

⁶⁹ See, for example, National Commission for Scheduled Castes and Scheduled Tribes, Fourth Report (1996-1997 and 1997-1998) (Government of India 1998), at 144-174.

⁷⁰ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989), Chapter II, Section 3(1)(iv)-(v).

Displacement due to the Gujarat Riots

Wanton destruction of houses and property was one of the primary consequences of the February 2002 riots in the State of Gujarat. The violence that predominantly targeted the Muslim religious minority denied more than 110,000 people the right to live in security, peace and dignity. People were forced to move to relief camps due to destruction of their houses or because of fear for their physical safety. According to the Government of Gujarat figures, 104,318 people had sought refuge in relief camps by 28 April 2002, exactly 2 months after the violence started.

The government officially closed all but ten relief camps by mid-June 2002, but many people continued to live in the "closed" camps, because they did not believe that their former homes were secure.

An independent survey, conducted under the auspices of the National Human Rights Commission, estimates that at least 250,000 families were displaced due to the 2002 riots. About 50% of these families are still living in extremely low cost permanent housing provided by NGOs. Either these housing colonies were not being given electricity, water and basic sanitation services, or State authorities were requesting exorbitant amounts for these services.

NGOs and civil society organisations have been forced to meet the needs of displaced riot victims and have undertaken the task of rebuilding many homes, largely without financial support from the government. According to information made available by Citizens' Initiative, 1990 new colonies were built for riot-affected people by NGOs. Another NGO, the Islamic Relief Committee Gujarat, has built 1,321 new homes and repaired an additional 4,946 damaged homes. NGOs involved in the reconstruction of demolished houses carry out their work in an extremely hostile political climate due to which they experience severe tension and fear of harassment. Furthermore, it is clear that the rehabilitation packages offered to victims of the 2002 riots are substantially less than those offered to those displaced due to the 2001 earthquake.⁷¹

In May 2002, HIC-HLRN and YUVA collected data relating to housing, displacement, and rehabilitation in two areas affected by the riots.⁷² The city of Ahmedabad, which has a history of communal violence, was chosen as an example of an urban situation and Sabarkantha district was chosen as a rural example. The Muslim inhabitants of both

⁷¹ Concerned Citizens' Tribunal, Gujarat 2002: Crime Against Humanity, Vol. II (November 2002), at 127.

⁷² Rebuilding from the Ruins: Listening to the voices from Gujarat and restoring people's right to housing, livelihood and life, Ed. Sharmila Joshi (Habitat International Coalition and Youth for Unity and Voluntary Action 2002) [hereinafter Rebuilding from the Ruins].

areas had been subjected to extensive violence beginning 27 February 2002, continuing to the time of the visit of the fact-finding team.

The investigators found that the State Government of Gujarat and the Government of India failed on numerous levels to protect and promote the victims' right to adequate housing as mandated by India's international and domestic obligations.

State Failure to Stop the Violence⁷³

It is clear that the State neglected its duty of protecting the lives, homes and livelihoods of its people. Moving mobs killed women, men and children from the Muslim community in the cities and villages of Gujarat. People were forcibly evicted from their homes as they were attacked by mobs numbering between 500 and 5,000, wielding swords and knives. Attackers brutally raped women and girls before killing them. Many fled, even though their houses were not attacked, due to the prevailing atmosphere of insecurity. Muslim houses and commercial establishments were systematically targeted, looted, damaged and burnt. Mobs using gas cylinders or explosives destroyed houses and shops in a premeditated manner that have left nothing but charred ruins. They also targeted and destroyed Muslim places of worship.

The local people testified to the study team that, not only did mobs loot and burn Muslims' homes, but whatever remained in the houses continued to be looted systematically under the cover of the curfew and, in many cases, with police protection. Some of those who had to abandon their homes told the study team that, after the first attack, when they had moved to relief camps, their homes were looted. In many communities in Ahmedabad, window frames, doors, sewer covers, fans, beds and parts of machinery were still being wrenched out and taken away from the rubble of homes in May 2002.

The police largely failed to protect people who were in danger. They did not arrest attackers from openly and systematically burning, looting, and killing, even during curfew hours.

Leaders of the Muslim community had to gather forces to rescue and protect those who were attacked in the carnage. In most cases, people had to depend on their own resources and on help from members of their own community, sympathetic villagers, and NGOs to reach safer areas. In many places in Ahmedabad, fleeing Muslim families had to make their own arrangements such as organizing trucks to Muslim-majority areas that were perceived to be more safe and secure.

The lack of responsible action on the part of the State constitutes a violation of the fundamental right to protection of life and liberty as guaranteed under Article 21 of the Constitution of India. India has also violated its commitment under the ICESCR, which holds that the State has an obligation to guarantee the right to housing as the right to live in peace, security, and dignity.⁷⁴ Furthermore, forced evictions that occur due to forcible removal of people are incompatible with the provisions of the ICESCR.⁷⁵ India has also violated its commitments under the International Covenant on Civil and Political Rights by not preventing unlawful attacks on the privacy and home of the Muslims of

⁷³ The following is excerpted from *Rebuilding from the Ruins*, at 68-70.

⁷⁴ General Comment 4.

⁷⁵ See General Comments 4 and 7.

Gujarat.⁷⁶ Finally, the UN Guiding Principles on Internal Displacement require the State to protect the property of people who have been forced or obliged to leave their homes due to generalized violence or violations of human rights; everyone has to be protected from pillage, indiscriminate attack or other acts of violence.⁷⁷

State Failure to Provide Adequate Relief⁷⁸

Most of the camps in Gujarat were not established by the State but by local individuals or communities. The camps were largely set up in Muslim-majority areas, both in Ahmedabad and Sabarkantha. In most cases the land was provided by the community or welfare organisations of the area. Many of the camps were located on lands that would not normally be occupied. In addition, many of the camps run by local communities had not even been recognized by the State. The discrepancy in the number of camps quoted by the State government and by local NGOs appears to be a strategy adopted by the State government to downplay the extent of the destruction and the number of the affected families in Gujarat.

Shelters in the camps were completely inadequate. Typically, these consisted of tarpaulins that, in almost all cases, were donated by local individuals. In some camps, local organizers had obtained tents from NGOs and in others people were housed in buildings, usually provided by the community. The government had not provided any shelter in the camps that the team visited. In a report on "Relief and Rehabilitation of Riot-affected Persons," the State government claims to "have erected 126,862 sq. ft. of additional shade/*shamianas/pandals* and 45 tents...." These figures, however, do not indicate the geographical areas or relief camps covered and are not verifiable.

Basic amenities such as water and toilets were also inadequate. Camps that were not recognized by the State government had to depend on local help and initiatives. Water was provided mostly by tankers, even in camps recognized by the government. People complained about the quantity and quality of the water, and they had to use chlorine tablets for purification. The toilets had no facilities essential for effective and clean functioning such as water, electricity and dustbins.

As members of the Citizen's Initiative recently reported to HIC-HLRN:

"Some of the basic amenities such as electricity were not restored even after a year. The Government never showed any concern on such issue. Restoring power not only means mere electrification but also instilling a sense of security, as it would dispel the darkness in and around the living quarters. The wiring and other fitting costs destroyed during the carnage was already a big amount for the people. Beside them the victims were asked to pay a huge amount for the cost of the meters and cable wires destroyed during the carnage. Some NGOs came forward to support this cost but the tedious bureaucratic process and the lethargic functioning of the electricity company delayed it for months and thus caused the people to live in 'darkness' and insecurity."⁷⁹

In summation, the State's response in providing relief to the affected families and communities has been grossly inadequate. It failed in its response to provide adequate relief on all counts: the establishment of camps, provision of relief material and shelter in the camps, the provision of basic amenities such as water and sanitation services, and

⁷⁶ See Article 17(1) of the International Covenant on Civil and Political Rights.

⁷⁷ Principle 21 of the UN Guiding Principles on Internal Displacement.

⁷⁸ The following is excerpted from *Rebuilding from the Ruins*, at 70-72.

⁷⁹ *Habitat Security for the Victims of the Gujarat Carnage 2002 – A Mirage?* (Citizens' Initiative Draft Paper 2004).

ensuring safe and secure living conditions within the relief camps. The State also failed to provide information about relief packages to the affected families, thus also violating their right to information.

Inadequacies of Compensation Packages⁸⁰

There are two main problems with the methods used by the State in compensating affected families for loss of life and for damage to their houses and livelihood. First, the process of assessment of the damage did not follow any well-defined parameters and was neither transparent nor participatory. Second, the process of disbursal of funds was random.

The confusion surrounding the compensation packages raises the issue of transparency and the right to information, which the Supreme Court has stipulated as a fundamental right. The government is duty-bound to disclose information on these issues.

The State government's resolution of 20 March 2002 fixed the maximum amount for houses lost at Rs. 50,000. This by any standard is very low. A house in communities such as Jalampuri ni Chaali and Choksi ni Chaali in Ahmedabad would not cost less than Rs. 150,000 (for the structure alone). In these communities families have received checks as low as Rs. 500 for houses that have been razed to the ground. In the relief package following the 2002 Gujarat earthquake, the maximum was Rs. 90,000. Activists working on housing issues in the State point out that the amount allocated for construction of houses in poverty alleviation schemes such as the Inira Awas Yojna and the Sardar Awas Yojna is Rs. 40,000.

The State government must adopt the standards for adequate compensation for gross human rights violations to meet international human rights law. The ex-gratia amounts offered fall short of any reasonable standards.

The right to adequate housing as protected in Article 11 (1) of the ICESCR is understood not to mean four walls, but a place that is secure, has all the basic facilities and is accessible.⁸¹ Any compensation must fulfill these requirements. Principle 29 of the Guiding Principles on Internal Displacement requires the government to provide compensation to the internally displaced when their property and possessions have been destroyed and cannot be recovered. Additional guidelines are contained in Principle 23 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law. It states that compensation should be provided for any economically assessable damage such as physical and mental harm, emotional stress, material loss, loss of earning, and cost of legal experts. Principle 15 also says that reparation should be proportional to the gravity of the violations and harm suffered.

The study team found that a number of families had returned to their villages and emphasized that they have a right to return home. However, the government needs to be aware that a substantial number of Muslim families do not want to return and that these individuals also have a right to security and to reside wherever they desire. The money given as ex-gratia is not sufficient to enable them to relocate. Many people said they could not sell their property in the current atmosphere and relocate elsewhere

⁸⁰ The following are excerpts from *Rebuilding from the Ruins*, at 72-81.

⁸¹ See General Comment 4 and Article 11 (1) of the ICESCR, which states that States must "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."

because they would get only half the actual price. Rehabilitating people is the State's responsibility and the State cannot force unwilling families to return to their original homes if they feel unsafe. Camps sheltering people who are unwilling to return or have nowhere to go need to be kept open until the government provides them with adequate housing.

Failing to provide such alternatives amounts to forcing people, left with no recourse, to return someplace they do not wish to go. Forcing people to go back to where they feel insecure is a violation of the right to adequate housing. One of the core elements of the right to housing as provided in the ICESCR is the right to live in peace and security. Furthermore, the Constitution of India guarantees the freedom to reside and settle anywhere in the country.

Again, as Citizens' Initiative notes:

"The fact that even today many families could not return to their original habitation in spite of their desire to do so indicates a grave situation of the reality. This is a gross violation of their right to live in a place of their choice. The indifference and apathy of the State suggests that communalism in India remains like an active volcano that can erupt at any moment."⁸²

RECOMMENDATIONS

In the aftermath of the Gujarat riots, it is particularly important that the State facilitate the creation of conditions that allow the affected persons to have the freedom to exercise their right to adequate housing.⁸³ Within this freedom, the State's role should be to promote, and where necessary, allow, the space for the achievement of the following rights: the right to information; the right to equal access to civic services; the right to a healthy and safe environment; the right to access decentralized decision-making bodies and the right to form such bodies; the right to reside; the right to security of tenure; the right not to be dispossessed; the right to required housing skills, finance and technical support; and the right to gender equality in all the rights stated above.

RECOMMENDATIONS

To the Committee on Economic, Social and Cultural Rights:

- Request detailed information from the Government of India about the attempts it has made to protect those whose rights were violated during and after the riots in Gujarat, with particular attention to the right to adequate housing. Specifically, request that the Government assess the extent to which its rehabilitation schemes have been in keeping with the UN Guiding Principles on Internal Displacement, in particular Principles 14

(right to freedom of passage), 18 (right to an adequate standard of living), 21 (right not to be arbitrarily deprived of property), 28-29 (principles relating to resettlement and reintegration). As stated in Principle 25 of the Guiding Principles on Internal Displacement: "The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with *national authorities*."

- Request the Indian Government to provide detailed information about the living conditions in the resettlement camps, with

⁸² Citizens Initiative, *Habitat Security for the Victims of the Gujarat Carnage*, at 4.

⁸³ See *Rebuilding from the Ruins*, at 81-89.

particular attention to availability of services, materials, facilities and infrastructure (including food and potable water); security of tenure; habitability; location; and cultural adequacy.⁸⁴

To the Indian Government:

- Comply with domestic and international legal provisions to ensure protection of the entitlements that comprise the right to adequate housing and living conditions and the elimination of all forms of discrimination and equality before the law. In particular: Articles 19 (1) (e), 21, 38 (1) and (2), 39 (a), 14 and 15 of the Indian Constitution; the ICESCR, CERD, CRC, CEDAW, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the Guiding Principles on Internal Displacement, and the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law.
- Immediately prosecute offenders. This falls within the State's overall obligation to take action against those guilty of violating the security of the home and person.⁸⁵
- Assume full responsibility for relief and rehabilitation. The State government must undertake measures for full relief and rehabilitation of all affected by the riots, while the Centre plays a monitoring role in this regard. These, and the following obligations, are clearly laid out in General Comment 7 of the Committee as well as the international human rights instruments above.
- Continue relief measures where required. As stated in the UN Guiding Principles on

Internal Displacement, "the primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with *national authorities*."⁸⁶ The government must provide relief where it is still required and where the immediate closure of camps is not possible due to a lack of adequate and appropriate rehabilitation measures, including provision of security.

- Provide housing and rehabilitation. This prerequisite for the promotion of the right to adequate housing must include permanent shelter with clear land titles as well as basic amenities and civic services including water, sanitation, electricity, roads and transport facilities, and rations; livelihood opportunities for men and women; and education, recreation and health facilities for children.
- Where families want to return to their homes, the State must: create a safe and secure environment; provide full compensation; fully reassess the existing compensation package; provide basic facilities; provide adequate protection measures; provide social and psychological counselling.
- Where families and communities cannot return to their homes the State must supervise the identification and reservation of sufficient plots with access to infrastructure, basic amenities and civic services in rural and urban areas.
- Develop institutional mechanisms for undertaking the rehabilitation of those forcefully evicted from their homes due to the violence. These mechanisms should be based on all applicable human rights principles, in particular the UN Guiding Principles on Internal Displacement.

⁸⁴ See General Comment 4, para (a)-(b), (d), (f)-(g) and Guiding Principles on Internal Displacement, Principle 18.

⁸⁵ See Limburg Principles, at para 72: "A State Party will be in violation of the Covenant...if...it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfillment of a right."

⁸⁶ UN Guiding Principles on Internal Displacement, at Principle 25 (1).

Urban Homelessness

Unplanned Urban Migration

Since 1947, New Delhi has grown 471 percent, Bombay 227 percent, Madras 49 percent and Calcutta 39 percent.⁸⁷ In addition to the much-publicized proliferation of urban slums, this largely unstructured urban growth has also resulted in sections of the urban population who regularly contribute to a city's economy yet are unable to afford even the most basic form of shelter.

In June-July 2000, Aashray Adhikar Abhiyan (AAA), a civil society organisation that works on behalf of the rights of the homeless, noted that there was no accurate data for homelessness in New Delhi and carried out a Rapid Assessment Survey (RAS) survey of New Delhi's homeless population.⁸⁸ The study was carried out by fifty-three volunteers from civil society organisations in New Delhi.

The AAA survey counted 52,765 homeless persons in New Delhi. A homeless person was understood to be: "Any person sleeping in an open place, on the pavement, under trees, parks, verandas, railway platforms, public receptions, bus stands, hospitals, or night shelters and do not have a place of their own. In addition, any person who is without proper sleeping facilities and who is forced to carry along with them, all their meagre belongings, as they have no place to keep them".⁸⁹

Of the 690 persons who answered the RAS questionnaire, the vast majority (96%) were migrants from outside of New Delhi. Sixty-nine percent of those who were not from New Delhi had left their native place due to extreme economic distress, and 74% of the respondents cited work opportunities as their reason for choosing to live in New Delhi. Ninety percent of the respondents were employed, however 70% earned below the minimum wage of Rs. 96 per day. The majority of respondents saved money and regularly sent money home to their families in the villages. Over one-third of the respondents had been sleeping on pavements or in the open for more than five years. When asked about the problems faced at their sleeping place, the most common problem cited by respondents was police brutality (41%).

Eighty-two percent of the respondents had neither a ration card nor voter's identification in New Delhi. Lack of proof of residence in New Delhi contributes to police harassment and to difficulty accessing medical care at government hospitals. They are also unable

⁸⁷ Health Initiative Group for the Homeless (HIGH), Health Care Beyond Zero: Ensuring a Basic Right for the Homeless (HIGH – Aashray Adhikar Abhiyan 2003), at 4, quoting Voluntary Health Association of India, Delhi: Tale of Two Cities (VHAI 1993).

⁸⁸ The Capital's Homeless: A Preliminary Study (Aashray Adhikar Abhiyan 2001) [hereinafter The Capital's Homeless]. The Banjaras (gypsies) and Ioharas (a nomadic blacksmithing tribe) were not included in the survey.

⁸⁹ The Capital's Homeless, at 5.

to access their voting rights. In September 2001, the Delhi Government announced that it would issue Ration Cards to homeless people through the Public Distribution System, but as of January 2002 only 4,286 homeless people had received cards.⁹⁰ The overwhelming majority (90%) of respondents claimed no political affiliation and none were associated or involved with any civil society organisation.

As Aashray Adhikar Abhiyan notes, "[H]omelessness itself is perceived in India to be a crime. Wandering persons (vagrants), mentally ill homeless persons (MIHP), are all 'guilty' of violating several penal statutes under which the entire enforcement is left to the police and the magistracy."⁹¹

Furthermore, although the 2001 Census was the second census to attempt to count the number of homeless people in India,⁹² its methodology was exceedingly weak. Aashray Adhikar Abhiyan assisted in the data collection process at the request of the Director of Census, and observed a host of errors including falsifying data, verbally and physically abusing the homeless as the census was carried out, and failing to make a reasonable attempt to make sure that the majority of homeless persons were included in the census.⁹³ For example: "One enumerator was filling all the forms, all by himself. His fingers had turned blue...It was due to the stamp pad that he was using for finger printing, as advised by his supervisor: to use his thumb for a man, his little finger for a child, ring finger for a woman and a knuckle for someone disabled."⁹⁴

Abuse of the Law

Police brutality was commonly faced by many of the respondents to AAA's rapid assessment survey. Ambiguous legislation allows police officers to act on pre-existing biases against homeless people and jail individuals who have often committed no crime. According to AAA:

"Under the Bombay Prevention of Begging Act, 1959, begging is illegal in Delhi. 'Begging' is defined in the Act as 'soliciting or receiving alms in a public place' and includes anyone 'having no visible means of subsistence and, wandering about or remaining in any public place in such condition or manner, as makes it likely that the person doing so exists by soliciting or receiving alms'. This ridiculously broad definition allows the Delhi police to arrest anyone who looks poor and unfairly targets those who are homeless and live in public places such as pavements or parks. The Act is one of the main legal instruments used by the police to clear the homeless off the streets in so called 'clean-up' drives to beautify Delhi or in the event of visits by international dignitaries.

"Any person arrested for begging has to appear before the Court. If the Court is satisfied that the person is not likely to beg again, it may release him/her on a bond for abstaining from begging. Currently, there is no free legal aid available for beggars and therefore, unable to defend themselves, the overwhelming majority are convicted.

"A convicted beggar can be detained in a Certified Institution for a period of up to three years and no less than one year. When a person is convicted for begging for a second or subsequent time, he/she can be detained for a period of up to 10 years. A 'Certified Institution' is defined as 'any institution which the Chief Commissioner provides and

⁹⁰ Basere ki Kahani (Story of Shelter) (Aashray Adhikar Abhiyan 2002) [hereinafter *Basere ki Kahani*], at 18.

⁹¹ Health Initiative Group for the Homeless (HIGH), *Health Care Beyond Zero: Ensuring a Basic Right for the Homeless* (HIGH – Aashray Adhikar Abhiyan 2003) [hereinafter *Health Care Beyond Zero*], at 4.

⁹² The first Census to count the homeless was in 1991.

⁹³ See Indu Prakash Singh, "Census of the homeless: a painful farce and assault," *First City* (April 2001) and Aashray Adhikar Abhiyan, "Census 2001", available at <http://www.indev.nic.in/delhishomeless/census.htm> (last accessed 5 April 2004). See also Radhika D Srivastava, "Census 2001 ignores the homeless", *The Times of India* (2 March 2000).

⁹⁴ Indu Prakash Singh, at 58.

maintains for the detention, training, and employment of beggars and their dependents'. The reality however, is different. These 'Certified Institutions', known as Beggar Homes, are little more than prisons that offer no training or employment whatsoever.

"The penalty for employing or causing persons to beg or using them for purposes of begging is imprisonment for up to three years. However, these beggar 'pimps' are rarely arrested as they have enough money to bribe the police.

"The Bombay Prevention of Begging Act, 1959 is supported by the Delhi Prevention of Begging Rules, 1960 which states that any person without a permit to solicit or receive, money or food or gifts can be arrested."⁹⁵

Lack of Night Shelters

Homeless is not mentioned in the National Housing and Habitat Policy 1998 or the Draft National Slum Policy 2001, despite the government's goal of "National Housing for All" in its National Agenda for Governance of 1997.⁹⁶ Furthermore, the Union Budget has allotted only Rs. 1 crore for building night shelters in the entire country.⁹⁷

In November 2001 and January 2002 AAA researched the conditions in thirteen Municipal Corporation of Delhi (MCD) run night shelters for the homeless. At the time of the study, these night shelters had a total capacity of 2,601 people — a number which was grossly inadequate given the number of homeless counted in the 2001 RAS alone. AAA noted that over a third of New Delhi's night shelters had been closed within the last four years, and that only one new shelter had been opened within the last ten years.⁹⁸

The study used a Participatory Reflection and Action (PRA) methodology to identify problems in the night shelters. All of the participants in the study were adult males, as there are no government run shelters for women and only one shelter has space set aside for children but this space is run by an NGO.

The problems in the night shelters included:

- Dirty Blankets. Although the MCD is required to clean blankets every 15 days, this was not being done and many blankets were infested with lice or smelled of urine. In some shelters there were not enough blankets and the participants complained that they were very cold in winter.
- Lack of Water. Ten shelters did not have drinking water and four shelters did not have any water at all.
- Inadequate and Dirty Toilets. In one shelter there were no toilets at all; in another there were three toilets for a shelter with a capacity for 240 people.
- Mistreatment of users by the night shelter staff.

Furthermore, at the time of the study only 19 out of the 22 planned night shelters in New Delhi were actually being run by the MCD, of which 14 were actually operational. This includes an additional shelter, at the Old Delhi Railway Station, that had been turned into a detention centre for "Bangladeshi migrants" and housed 17 people

⁹⁵ The preceding text is excerpted from Aashray Adhikar Abhiyan, "Beggary Act", available at <http://www.delhishomeless.org/beggaryact.htm> (last accessed 5 April 2004).

⁹⁶ See Rediff on the Net, "The Rediff Business Special: BJP national agenda's economic policies" (4 April 1997), available at <http://www.rediff.com/business/1998/apr/04xfire.htm> (last accessed 13 April 2004).

⁹⁷ *Ibid.*, at x.

⁹⁸ Basere ki Kahani, at 1.

although it had a capacity to hold 525. Together, the shelters could hold a maximum of 2,937 people, and as noted above the Aashray Adhikar Abhiyan Rapid Assessment Survey alone counted 52,765 homeless people in New Delhi.⁹⁹

Recommendations

In general, India needs to respect, protect and fulfill the currently neglected human rights of the homeless. The government needs to create schemes for the urban homeless, and the human rights of the homeless must take a central place in these schemes.

RECOMMENDATIONS

To the Committee on Economic, Social and Cultural Rights:

- Request the Government of India to provide the data pertaining to homelessness from the 2001 Census.
- Request the Government of India to create a concrete action plan for improving the flawed methodology of the 2001 Census.
- Request the Government of India to provide detailed information on the implementation of the centrally sponsored Shelter And Sanitation Facilities For The Footpath Dwellers In Urban Areas (Night Shelter Scheme).
- Request the Government to provide detailed information on implementation of the Bombay Prevention of Begging Act, 1959, the New Delhi Prevention of Begging Rules, 1960, and Sections 109 and 151 the Criminal Procedure Code, under which many homeless individuals are jailed.

To the Indian Government:

- Abolish the Begging Act and Vagrancy Act as they effectively criminalize poverty. New policies and legislation should be put in place to protect and promote the human rights of the destitute homeless (the mentally ill, the elderly, children, and disabled persons).
- Full and correct implementation of the Night Shelter Scheme and conversion of night shelters into a 24 hour scheme. This could mean allowing the use of public spaces (municipal schools, government

schools, community centre) as night shelters.

- Create 24 hour shelters for homeless women; currently there are none.
- Issue voters cards to all homeless. This is allowed by the Election Committee itself (Chapter 3, para. 5.1 of Handbook 4, Electoral Registration Officers).
- Follow through with birth registration of children of homeless parents.
- Issue below the poverty line (BPL) ration cards for homeless people
- Make access easy for the homeless in government hospitals/clinics.
- Provide mobile health care vans for the homeless.
- Make micro-finance available for the homeless to start up economic ventures.
- Create micro-finance schemes for housing for the homeless.
- Develop specific schemes for urban homeless. For example: the Self Help Groups Mahila Samakhya.
- Provide vocational training for the homeless. Create schemes such as TRYSEM (Training of Rural Youth for Self Employment) for urban homeless people.
- Provide drug de-addiction centres for the homeless.
- Provide a training institute for homeless children, youth, women and men.
- Revise Sections 109 and 151 of the CrPC so that they do not lend themselves to the arbitrary detention of homeless individuals.

⁹⁹ The Capital's Homeless: A Preliminary Study (Aashray Adhikar Abhiyan 2001), at ix-x.

Development-Induced Displacement

Development projects such as large dams and mining projects have resulted in the displacement of millions of people in India. The Planning Commission of India estimates that 21.3 million individuals were displaced due to development projects between 1990 and 1995. (It should be noted that non-governmental estimates of the number of displaced persons are much higher.)

Despite India's obligation to refrain from forced eviction under international human rights law, the State has consistently used the Land Acquisition Act of 1894, the notion of "public purpose," and the antiquated doctrine of "eminent domain" to forcefully evict people from their homes without sufficient rehabilitation efforts. Communities that were already marginalized due to social or economic factors are further discriminated against when "development" projects are given priority over the communities that inhabit the areas they will cover. Many argue that this irreparably undermines the legitimacy of a form of "development" that contributes to the impoverishment of thousands of communities.

Development-based displacement has also disproportionately affected India's tribal population: 8.54 million displaced people (40% of the total displaced) belong to the scheduled tribes, who comprise only 8% of the total Indian population. In particular, mining and dam projects have displaced entire tribal communities as well as others who live on and rely on the land taken over for the project.

Mining Projects

Mining projects, often located in impoverished but resource-rich parts of India, have displaced thousands of tribal communities and cause significant environmental and health-related damages. The displacement often occurs without proper, if any, consultation with the affected persons. Despite guarantees of the Fifth Schedule of the Indian Constitution, state governments are increasingly authorizing the transfer of adivasi (or tribal) lands to non-tribal entities for the purpose of mineral exploitation. The purpose of the Fifth Schedule, besides laying down guidelines for administration of tribal areas, is to guarantee adivasis their traditional land rights and to protect them from land alienation.

According to Food First Information and Action-Network (FIAN):

"India's huge reserves of minerals attract both national and international companies. After the Indian Government announced the New Mineral Policy in 1994, global mining giants entered into joint ventures with Indian companies. So far, the impact on the people and their environment has been disastrous: deforestation, loss of top soil, discharge of toxic effluents and dumping of toxic wastes are some of the problems. Furthermore, thousands of people (mostly adivasis) were uprooted and displaced without proper resettlement and rehabilitation."¹⁰⁰

A recent court case highlights the extent to which state governments in India fail to respect or promote the right to adequate housing when forced to choose between mining interests and the interests of adivasis currently residing in mineral-rich areas.

In 1997, the Supreme Court upheld the petition of Samata, a social action group working in Andhra Pradesh (AP), against the leasing of lands in Fifth Schedule areas by the Government of Andhra Pradesh to private mining companies. A three-judge bench of the Court in a 2:1 verdict held that the prohibition on transfer of immovable property in scheduled areas by a "person" to a non-tribal in the AP Scheduled Areas Land Transfer Regulation Act (APSA LTR) would also extend to the Government, the Government also being a "person" within the meaning of the relevant clause of the Act. The judgment also pointed out that the Governor, using powers under the Fifth Schedule, had inserted in 1991, a sub-section in the Mines and Mineral (Regulation and Development) Act, 1957, that prohibited grant of mining leases and prospecting licenses in Scheduled Areas to any person who was not a member of a Scheduled Tribe.

While adivasis and civil society groups all over the country welcomed the 'Samata Judgment', State authorities have since been exploring ways in which the judgment can be challenged or subverted. One such serious attempt has been from the State Government of Orissa. The *Samata* judgment had listed the Orissa Scheduled Areas (Transfer of Immovable Property) Regulation and the Orissa Land Reforms Act, 1960 as legislation with the purpose of prohibiting transfer of scheduled area lands to non-tribals. However, in April-May 2001 the Government of Orissa constituted a Committee of Secretaries and a Cabinet Sub-Committee which subsequently recommended that the complete prohibition of land transfer to non-tribals in Scheduled Areas as in the Andhra Pradesh legislation need not be replicated in Orissa. The reason for this being that existing state laws adequately protected tribal interests. The Cabinet Sub-Committee further noted that the Supreme Court had, in the BALCO case, expressed strong reservations with regard to the correctness of the majority decision in Samata's case and had ruled that the Madhya Pradesh state legislation was not similar to APSALTR.

Following this, the Sub-Committee called a stakeholder consultation and study of best practices on the transfer of tribal land. The stakeholder consultation, however, failed to include any members of the affected communities, instead relying solely on the opinion of public and private mining companies. The Orissa Cabinet approved the resulting Draft Policy on Grant of Mining Lease and Transfer of Land for Commercial Projects in December 2003.

¹⁰⁰ "Fact Finding Mission on the Human Right to Water: India, 8-14 January 2004" (FIAN Draft Report 2004) [hereinafter FIAN Fact Finding Mission].

There are two main legal challenges to the Orissa policy. First, as mentioned above the *Samata* judgment listed the Orissa Scheduled Areas (Transfer of Immovable Property) Regulation and the Orissa Land Reforms Act, 1960 as legislations with the purpose of prohibiting transfer of scheduled area lands to non-tribals. Second, the judgment had noted the provisions of the Andhra Pradesh legislation on Panchayats in Scheduled Areas. According to this provision, the central Panchayat (Extension to Scheduled Areas) Act, 1996 provides Gram Sabhas (village bodies) with the power to prevent alienation of land in the Scheduled areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.

Furthermore, the *Samata* judgment said that in the case of land transfer that was not totally prohibited:

"Since the Executive is enjoined to protect social, economic and educational interests of the tribals and when the State leases out the lands in the Scheduled Areas to the non-tribals for exploitation of mineral resources, it transmits the related constitutional duties and obligations to those who undertake to exploit the natural resources...In this behalf, at least 20 per cent of the net profits should be set apart as a permanent fund as a part of industrial/business activity for establishment and maintenance of water resources, schools, hospitals, sanitation and transport facilities by laying roads, etc."

It is worth noting that the so-called "stakeholders" consultation had concluded that only five percent of the net profit was a "reasonable" allocation for tribals whose lands would be transferred.

The government of Orissa seems determined to encourage mining activity in spite of widespread protests against forced evictions, loss of livelihood and environmental degradation. The firing upon and killing of three adivasis in Kashipur, Rayagada district are illustrative of the State's determination. The adivasis were killed while they were protesting against the Utkal Alumina Bauxite Mining Project, which is estimated to have affected more than 2100 families in 24 villages.¹⁰¹ When FIAN conducted a fact-finding mission to Kashipur in January 2004, it found that there had been no consultation or public hearing with the affected communities and that none of the studies supposedly conducted on the environmental impact of the project have been made public. FIAN also points out that the government as well as Utkal Alumina International Ltd. are in contempt of the *Samata* judgment.¹⁰²

The State and Central Governments continue to lobby for amendment of the Fifth Schedule of the Constitution to undo the *Samata* judgment. The Central Government, through its Ministry of Mines (Ref: 16/48/97-MVI, dated July 10th 2000) circulated a secret document among all the Secretaries proposing amendments to the Fifth Schedule to overcome the *Samata* judgment. This proposed to amend the Fifth Schedule itself to remove the legal basis for the Judgment and to get it passed in the parliament by a simple majority. According to *Samata*, the attitude of the government is best summed up in its active endorsement of the Attorney General of India that the way forward is to 'effect the necessary amendments so as to overcome the said SC Judgment by removing the legal basis of the said Judgment.'¹⁰³

¹⁰¹ FIAN Fact Finding Mission. See also <http://www.saanet.org/kashipur/articles/pop.htm>

¹⁰² FIAN Fact Finding Mission.

¹⁰³ See *Samata, Surviving a Minefield: An Adivasi Triumph* (Samata 2003).

Large Dams

One well-documented example of this type of displacement is the dam construction on the Narmada River, with the subsequent uprooting of at least one million people. It is, as stated by the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, "India's greatest planned human and environmental disaster."¹⁰⁴ The UN Special Rapporteur on the right to adequate housing has written two letters to the Government of India on this issue. The first was dated 10 August 2001. The most recent letter, of 29 July 2003, was a joint letter with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples and the Special Rapporteur on the right to health. Each letter refers to urgent communications indicating that rehabilitation of project-affected persons has not taken place according to domestic and international human rights obligations.

In 1969, the Narmada Water Disputes Tribunal (NWDT) was set up to settle conflicting claims of the States such as sharing of the Narmada river waters, the cost of rehabilitating the displaced people, and the height of the dam. The Tribunal gave its award in 1979 and, in doing so, provided guidelines for rehabilitation of the affected population. One of the key provisions of the NWDT Award is the stipulation that compensation to the displaced must only take the form of land, not cash.

The NWDT Award (NWDTA) also requires that people be resettled at least one year before the monsoon that threatens their submergence, and that they be fully rehabilitated at least six months prior to that date; otherwise, the dam height should not be increased.

A significant problem with the Award, however, is that it only recognizes people who have been affected by the reservoir as oustees. For example, more than a thousand families in Gujarat who have been displaced by related developments such as a canal network, the new Shoolpaneshwar wildlife sanctuary, a new housing colony, and drainage works are not formally considered oustees. These and other communities do not have the ability to make legal claim for compensation and rehabilitation after displacement.

With few exceptions, the resettlement and rehabilitation of persons affected by the Narmada River dam projects have failed to even partially fulfill India's domestic and international human rights obligations. Following is information on the status of resettlement and rehabilitation of project-affected persons at several of the Narmada dam projects.

*The Sardar Sarovar Project*¹⁰⁵

The Sardar Sarovar Project (SSP) is a multipurpose, interstate project involving the construction of a large dam (138.68 m high) in Gujarat. If the project proceeds to its full design height, the damming of the river will form a reservoir approximately 214 kilometres long that will permanently inundate extensive areas in Gujarat, Madhya Pradesh and Maharashtra, besides causing additional submergence, every monsoon, of agricultural and other lands adjacent to its banks. The project has been projected to

¹⁰⁴ UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Report submitted on 21 January 2003 in accordance with commission resolution 2001/65.

¹⁰⁵ See Habitat International Coalition – Housing and Land Rights Network, *The Impact of the 2002 Submergence on Housing and Land Rights in the Narmada Valley: Report of a Fact-finding Mission to Sardar Sarovar and Man Dam Projects* (HIC-HLRN 2003) [hereinafter *The Impact of the 2002 Submergence*], at 8-25.

affect 40,827 families from 193 villages in Madhya Pradesh; 33 villages in Maharashtra; and 19 villages in Gujarat.

Since the 18 October 2000 ruling by the Supreme Court, there have been numerous reports that the rehabilitation of people affected at a dam height of 90m has not been completed, so the height of the dam should not be raised further. Nonetheless, the dam height has been raised and in March 2004 the Narmada Control Authority gave the Gujarat government the authority to raise the height of the dam to 110 m.

According to the Narmada Bachao Andolan (NBA):

"At meetings in January and February 2004, Madhya Pradesh Chief Minister Uma Bharti stated that all families that would be affected by an increase in the dam's height to 110m had been fully rehabilitated. Interestingly, the Government of Madhya Pradesh reduced its estimate of the number of project affected families by over 4,000 families during the past year. This is based on a false distinction between 'permanently' and 'temporarily' affected families that has no basis in the NWDTA or subsequent Supreme Court decisions and will deny all of the 'temporarily' affected oustees proper resettlement and rehabilitation benefits.

"The Government of Madhya Pradesh has furthermore excluded hundreds of families of major sons, which under the NWDTA are to be given land compensation. It has also failed to update land titles, which are extremely out of date in tribal areas, leaving many more people off its Project Affected Family (PAF) list. Moreover, it has failed to recognize the rights of untitled tribal lands—which have been cultivated for generations—thus treating thousands of small farmers as landless. Faulty level surveys have further excluded entire hamlets of people whose lands and homes are affected by the dam's floodwaters.

"Meanwhile, the Government of Madhya Pradesh has failed to provide the [project affected families] it does recognize with a single acre of adequate cultivable land in the state. Whether unwilling or unable to properly rehabilitate [project affected families], the government is forcing them to accept land in Gujarat (which in many cases is uncultivable) or take inadequate and illegal cash compensation. In many cases, as shown, it is simply deleting them on paper.

"As a result, it is estimated that in the event of heavy rainfall at the 110m dam height, at least 10,000 families who are habitating in the submergence area to date could be affected, having their houses and fields submerged."¹⁰⁶

In September 2002, the HIC-HLRN fact-finding team found several failures in the promotion and protection of affected communities' right to adequate housing. The NBA confirms that the following problems continue to exist despite the recent ruling of the Narmada Control Authority: (1) submergence during the monsoons results in food scarcity; (2) situation at the rehabilitation sites found to be inadequate; (3) non-settlement of land ownership rights in tribal areas; (4) ex-parte allocation for rehabilitation violates State policies and international standards; (5) differentiating between "temporary" and "permanent" submergence to reduce numbers of people to be rehabilitated; (6) lack of information about displacement and rehabilitation; (7)

¹⁰⁶ The above text is excerpted from Press Release, Narmada Bachao Andolan, Undercutting of PAFs and Lack of SSP Rehabilitation in M.P.: A Game in Numbers (23 February 2004), available at <http://www.narmada.org/nba-press-releases/february-2004/numbers.html> (last accessed 15 April 2004).

weaknesses of the grievance redressal authority; (8) raising the height of the dam without following due process; (9) failure to improve or restore standards of living.

*The Man Dam Irrigation Project*¹⁰⁷

The Man dam is one of 30 large dams planned as a part of the Narmada Valley Project. A 53 m-high dam is being constructed on the Man River, a tributary of the Narmada in Madhya Pradesh. The families affected by the project, in both the submergence areas and the command area, are predominantly tribal. The Detailed Project Report of 2001 states that 1,156 families will be affected by the project; 85 per cent of those families will be displaced. The other families will be losing less than 25 per cent of their lands. According to the government, 864 families will be affected. The Madhya Pradesh government formulated the Rehabilitation Policy for the oustees of Narmada Projects — Government of Madhya Pradesh, Bhopal, 1987. The policy provides that a minimum of two hectares of land will be given to all those who lose more than 25 percent of their land. Only in exceptional circumstances does the policy allow the payment of cash compensation with a number of built-in procedural safeguards. If the adivasis are to be paid cash compensation, the Collector must verify that cash compensation will not adversely affect the interests of the adivasi family.

In 2001, during the monsoons, the first dam-affected village was threatened with submergence. The affected people called on the Madhya Pradesh government to provide land-for-land as required by the State rehabilitation policy. Lacking alternative lands, the people refused to leave their homes despite the risk of flooding with the monsoon rains, saying, "Where will we go? What will we do?" In the face of the peoples' *satyagraha*, to avoid the risk of drowning the village, the project authorities blasted the sluice gates of the dam and released the monsoon flow.

In July 2002, the people were evicted from Khedi Balwadi by violent use of police force and in August 2002 the village was submerged. In this background, after the monsoons, HIC-HLRN sent a fact-finding team.

As in the case of the Sardar Sarovar Project, the HIC-HLRN team found that numerous violations of the right to adequate housing stem from the building of the dam: (1) violence used to evict people from their homes; (2) due to lack of rehabilitation, people have been rendered homeless and are facing the risk of starvation due to flooding after the opening of the sluice gates in August 2002; (3) inappropriate use of cash compensation and denial of rehabilitation entitlements to the affected people; (4) weaknesses of the grievance redressal mechanism. The NBA confirms that the Government of Madhya Pradesh has yet to take steps to provide adequate resettlement and rehabilitation for the project affected families.

Maheshwar Dam

"The Maheshwar Dam is part of the Narmada Valley Development Project that entails the construction of 30 large and 135 medium-sized dams in the Narmada Valley. Maheshwar is one of the planned large dams and is slated to have a production capacity

¹⁰⁷ See *The Impact of the 2002 Submergence*, at 25-32.

of 400 megawatts. The project has been planned since 1978 and was originally under the auspices of the Narmada Valley Development Authority. In 1989 the responsibility for Maheshwar was conferred on the Madhya Pradesh Electricity Board (MPEB). Subsequently in 1993, the concession for the Maheshwar Project was awarded to the S. Kumars, a textile magnate. In 1994, the project received a conditional environmental clearance from the Central Ministry of Environment and Forests (MoEF). Maheshwar is the first privately financed hydroelectric dam in India and is expected to displace around 35,000 people."¹⁰⁸

A series of documents, produced by both the government of India and independent observers, confirm that the resettlement and rehabilitation procedures for the Maheshwar Dam are completely inadequate.

In 1998 a Task Force was created by the Narmada Valley Development Department to review the big dam projects in the Narmada valley and search for alternatives that would yield water and energy benefits without resulting in so much destruction. The Task Force report's concluded:

"While the present status of R&R may have generated controversy and debate, there was no disagreement on the view shared fully by all the members of the task force that there is a need to adopt a much greater human approach to R&R activities."¹⁰⁹

The Task Force recommended, inter alia, the creation of a comprehensive plan for a rehabilitation programme to be prepared with the involvement of project affected persons, that the plan should indicate the feasibility of resettlement and rehabilitation in terms of the availability of land for allotment, and that the rehabilitation and resettlement of families likely affected during the monsoon of any coming year should be settled "definitely, fully, finally and satisfactorily" by 31 December of the preceding year.

In October 1999 a team composed of representatives of the Ministry of Environment, the Ministry of Rural Development, and the Central Water Commission visited the area and confirmed that,

"Improper resettlement and rehabilitation is the root cause of discontentment and alienation of the Project Affected Persons (PAPs). It may be difficult to operate the project efficiently without the cooperation of the local people. The land that is acquired for the project is for a public purpose and generally the displacement is involuntary. The PAPs often face forcible eviction and, in fact, have no choice but to face the new social set up."¹¹⁰

In 2000 the Development Ministry of the Government of Germany commissioned an independent review of the Maheshwar Hydroelectric Project. Following is an excerpt from Alok Agarwal's forward to the report, as printed by the NBA:

"Noting the most flagrant and open violations of the rehabilitation policy of the Madhya Pradesh government as well as the statutory clearances of the Central Ministry of Environment and Forests, the team concludes that 'the Project has not implemented the land for land policy set by the government of Madhya Pradesh and by international standards' and that the 'R&R implementing agency has not allocated land to the landless, as called for in the environmental clearance of the

¹⁰⁸ The preceding paragraph is excerpted from The Friends of the River Narmada, "The Maheshwar Dam: A Brief Introduction", available at <http://www.narmada.org/maheshwar.html> (last accessed 14 April 2004).

¹⁰⁹ Task Force to Study Narmada Valley Development Options, "A Draft Report on the Chapter of Maheshwar Hydel Power Project" (October 1998). Available upon request from the NBA.

¹¹⁰ Department of Rural Development, Central Water Commission, and Ministry of Environment and Forests, "Tour Report of Maheshwar Hydro-electric Project, M.P." (October 1999). Available upon request from the NBA.

Ministry of Environment and Forests and, in any case, required by international and other national standards."

Nevertheless, the Ministry of Environment issued a new Clearance in 2001 and it listed the same unfit lands that had been listed in the 1994 Clearance. A 2002 report of the Ministry of Environment and Forests confirmed that the lands listed in the 2001 Clearance had yet to be listed as fit for rehabilitation.

The number of project affected persons is equally in dispute. Initially the Government of India stated that 4000 families would be displaced due to the Maheshwar Dam. The May 2001 Transport Clearance of the Ministry of Environment and Forests stated that 8000 families would be displaced. However, this figure omitted people who use common property resources such as fisherpeople and many tribals and dalits. The NBA has since undertaken two surveys, one which showed that an additional 5700 families would be displaced and another, after a 1994 flood on potentially submerged lands, which found that the number of families affected by this flood alone were higher than the total projection given by the Government for those to be affected by the dam.

Upper Beda Dam

The Upper Beda Project is proposed to be built on the Beda River at Village Nemit and will affect 14 adivasi villages. For the past six years the members of these villages have been struggling against the building of the dam. Nevertheless, immediately after the most recent state elections in Madhya Pradesh work began at the site.

Significantly, the most recent Narmada Valley Dam Authority Report on the Upper Beda Dam of March 2002 provides for: (1) the exchange of land for land; (2) resettlement according to the provisions of the Madhya Pradesh Displaced Persons Act of 1985; (3) a provision for landless individuals and single women as per a clearance letter from the Social Welfare Minister.

In January 2004 over 2000 people from the affected villages protested at Khargone and stalled all other work at the Collector's Office for nearly three hours. When the affected people presented a copy of the March 2002 report, government officials claimed that it was an outdated document and presented a new list of lands patently unfit for rehabilitation as part of the oustees' compensation packages. The Narmada Valley Dam Authority officials from Indore also refused to read the 2002 letter from the Social Welfare Minister aloud, despite the fact that the Chief Engineer for the Narmada Valley Dam Authority was eventually compelled to confirm its veracity.¹¹¹

¹¹¹ See Press Release, Narmada Bachao Andolan, Upper Beda affected tribals hold huge rally in Khargone; Mass demonstration heralds beginning of struggle of people affected by the Omkareshwar dam (10 January 2004), available at <http://www.narmada.org/nba-press-releases/january-2004/bedaomkar.html> (last accessed 15 April 2004).

RECOMMENDATIONS

To the Committee on Economic, Social and Cultural Rights:

- As per the instructions of the UN Comprehensive Human Rights Guidelines on Development-Based Displacement, the Committee should request the Indian government to provide detailed information on its compliance with the Guidelines.¹¹² In particular, the Committee should request the government to provide information on:
 1. The relevant State governments' fulfillment of the obligation of maximum effective protection;
 2. The relevant State governments' fulfillment of the obligation to prevent homelessness;
 3. The relevant State governments' fulfillment of the obligation to adopt appropriate measures of law and policy;
 4. The relevant State governments' fulfillment of the obligation to explore all possible alternatives;
 5. The relevant State governments' fulfillment of the obligation to expropriate only as a last resort.
- Request detailed information on current and planned methods of implementing the Ministry of Rural Development's National

Policy on the Rehabilitation and Resettlement of "Projected Affected" Families, 2003.

To the Indian Government:

- Declare a moratorium on any increase in the height of large dams until all project-affected families at the present height have been fully rehabilitated in accordance with all applicable laws and policies.
- Immediately stop forced evictions of communities displaced due to development projects.¹¹³
- Provide a full rehabilitation package, in accordance with all applicable national and international standards, to individuals whose homes have been submerged due to the opening of the sluice gates or the onset of the monsoon.
- Oversee implementation of a fair compensation process and outcome for affected persons' loss of access to common property resources as an important component of their livelihood and their immediate prospects for sustainable social development.
- Clarify to State authorities their constituent obligations to uphold protections of the human right to adequate housing under covenants signed by India.

¹¹² UN Comprehensive Human Rights Guidelines on Development-Based Displacement, at para 29, U.N. Doc. E/CN.4/Sub.2/1997/7 (1997).

¹¹³ See General Comment 7, at para 7, 13 and UN Comprehensive Guidelines on Development-Based Displacement, at para 4, 19-20.

Nomadic Communities in Rajasthan

Prior to the nineteenth century, the nomads of India often acted as traders and porters, connecting distant villages by bringing goods and knowledge from regions that were otherwise inaccessible. In effect, the Act gave 150 tribal communities criminal status. Law enforcement officials were granted wide discretion regarding the management and governing of such enlisted communities, enabling them to carry out summary convictions and imprisonment without trial. Pursuant to the Act, the listed communities were subjected to mandatory daily registration, severely curtailing their movement.¹¹⁴

In 1952 the Criminal Tribes Act was repealed and replaced by the Habitual Offenders Act. The listed tribes were officially de-notified. Yet the stigma of criminality remains today, and the nomads continue to be perceived as social outcasts surviving on the fringes of society. The cycle of deprivation did not cease with de-notification. De-notified tribes are not an enumerated class under the constitutional schedules and, because of this, lack the constitutional safeguards and benefits enjoyed by the Scheduled Castes and Tribes. Although some tribes have been included in recent amended lists, many impoverished tribes meriting specialized concessions remain unscheduled.

Eroding Livelihoods

Indigenous communities have lived in harmony with their natural surroundings for centuries, respecting and protecting the integrity of the lands. Land management policies can only benefit from the comprehensive insights and know-how of the indigenous perspective. Nevertheless, indigenous communities continue to be excluded from resource management decisions.

According to some, nomads were probably the first and the most seriously to be affected by the Indian Forest Act. In addition, various legislative enactments aimed at ecological preservation have eroded the tribals' customary rights of hunting, fishing, foraging and trapping. The Wildlife (Protection) Act, enacted in 1972 with a view toward ecological conservation, prohibits the hunting or capture of wild animals and the collecting of plants from forestlands and authorizes State appropriation of any wild animal bred in captivity.¹¹⁵ The Act also enables the State government to declare tracts

¹¹⁴ The following material is excerpted from Habitat International Coalition – Housing and Land Rights Network, “The Right to Adequate Housing and Nomadic Communities in Rajasthan” (HIC-HLRN Draft Report 2003).

¹¹⁵ Wildlife (Protection) Act Chapter III s.9.

of forest reserved for conservation purposes. Provided that all notification requirements are met, the courts have supported the forcible eviction of any individual squatting in contravention of the act.¹¹⁶ Pastoral nomadic tribes that are restricted from reserved land are unable to graze their herds, and non-pastoral nomads that depend on the forests for resources are similarly deprived of the main source of their livelihoods. The establishment of protected areas has not only alienated communities from their rich cultural heritage but has also caused serious impoverishment in many areas. Government initiatives to promote biodiversity have either failed to recognize the right of affected mobile communities to participate in environmental-management policies or have not made such participation mandatory. Although the task of addressing both the rights of nomadic communities as well as the needs of environmental conservation is clearly complex, such denial of the right to participate contravenes Article 1 of the ICESR.¹¹⁷

The land rights of the nomads have been further diminished by legislation introduced to acquire immovable property for the purpose of development. The Land Acquisition Act 1894 mandates that any acquisition must be executed with a process of enquiry into persons with prior claims to the land and the apportionment of compensation for valid claims.¹¹⁸ Any claim for compensation requires the production of entitlement documents. Nomadic communities are excluded *ab initio* from compensation since their peripatetic ways impede the finding of occupation and prior ownership.

Access to Land

Because many of their traditional livelihoods are no longer sustainable, many nomadic communities seek to settle permanently. Unfortunately, the assertion of their rights to land has been met by antagonism from settled communities, many of whom view the disbursement of land to nomadic communities as an incursion of their proprietary opportunities. This hostility manifests itself in many ways: huts are burnt, children are denied entry in schools because of caste bias, families are prohibited from using village wells or pumps, tribespeople are subjected to harassment from local law enforcement. Although the law prohibits such discrimination, entrenched social practices and prejudices have not changed. To date, the State of Rajasthan has not developed a formal settlement policy for nomadic communities who have articulated their desire to settle permanently. Because of government inaction and non-compliance with domestic housing standards (Indian Constitution Articles 21 and 15) and international housing-rights obligations (UDHR 16, ICESR 11), the nomads have been occupying vacant land classified as pasture and common land in State registers. Tenure is precarious because the tribes do not have formal title deeds to the lands they occupy.

On the village level, public information meetings are held for the disbursement of vacant land. Description of plots, size and location are made available to the villagers during such meetings; however nomadic communities have been discouraged from attending through purposeful misinformation about venues and times of meetings by settled villagers and local officials. This denial of the right to participate in the disbursement processes is in direct violation of anti-discriminatory provisions in the Constitution as well as the norms established by international law.¹¹⁹ Equally alarming is the fact that applicants are not informed of the progress of their applications and are routinely denied

¹¹⁶ See *Jaladhar Chakma v. Deputy Commissioner, Aizwal, Mizoram*, AIR 1983 Gau 18.

¹¹⁷ See also Convention on the Elimination of Discrimination Against Women, Article 5; International Covenant on the Protection of Civil and Political Rights, Article 25; and Maastricht Principles, para 14(d).

¹¹⁸ LAA (1894): The provisions on enquiry and compensation awards can be found in Part II, s.11 (ff).

¹¹⁹ Universal Declaration of Human Rights, Article 21(2); CERD, Article 5; Maastricht Principles, para 14; International Labour Organisation Convention 169, Article 6.

information when it is demanded. The lack of transparency in decision-making procedures and the lack of accountability for the delays in facilitating requests for title deeds breaches the constitutionally guaranteed right to information.¹²⁰

Forced Evictions

In the case of forced evictions, unacceptable gaps remain between international standards and the reality confronting nomadic communities in India. The informal homes of nomadic tribes are often mobbed and raided by local authorities and neighbouring villagers. Some of these village members have carried out violent tactics of intimidation to expel nomads from their informal settlements: throwing stones on their makeshift huts, destroying water pumps used by the nomads, deliberately breaking crockery and water jugs and burning huts. Acting in consonance with village members, local law enforcement officials often ignore nomadic claims of harassment or coercion. Police fail to file First Information Reports, despite the formal appeals for redress.

Living Conditions

Conditions in nomadic settlements are unsuitable for habitation. Many live in makeshift dwellings made of wood and rags, which provide poor protection from natural elements. Adults, children and livestock share the same living space. Dozens of families utilize one water source for their drinking, cooking, and bathing needs. Water quality and potability is a prevalent problem. Water borne diseases such as typhoid, viral fevers and skin diseases are rife in tribal settlements. Villages are strewn with human and animal faeces due to the lack of sanitation systems and drainage systems. Electricity is nonexistent. Many settlements are located in hillsides inaccessible from paved roads, sources of employment, schools and health services. The unhygienic conditions are vectors for diseases but tribes cannot afford medication or vaccinations.

Access to health facilities, safe drinking water, heating, lighting and proper sanitation and drainage services are all necessary for the fulfillment of the right to adequate housing. Particularly for women and children, issues of nutrition or resources for cooking and privacy concerns must be addressed. It is the State's obligation to provide sustainable and reasonable access to common resources, and to ensure just distribution of basic infrastructure.¹²¹

Recommendations

Confronted with diminishing livelihoods, many nomadic communities are willing to surrender their traditional mobility for sedentary lifestyles. The question remains whether settlement is a viable alternative for a people who have known no other way of life and who are not trained to perform tasks relevant to sedentary life. Policies of settlement result in the erosion of cultural identity and stifle a heritage inherently connected with the freedom to travel. The death of such a rich culture is to the detriment of society at large. As such, it is suggested that any rehabilitation or welfare

¹²⁰ See Article 19 of the Constitution of India.

¹²¹ UDHR, at Article 8; CESCR, at Article 12; CERD, at Article 5 (e); Maastricht Principles, at para 14(g).

policies be sensitised to the particular circumstances of non-pastoral nomads. It is imperative that these policies are implemented with the overarching goal of preserving the cultural distinctiveness of the nomadic tribes.

The right to land and adequate housing should be adapted to the particular lifestyle of the non-pastoral nomads. A non-sedentary lifestyle does not preclude the right to the basic amenities of life such as medical care and schooling. Yet, the right of choice is an essential component of the fundamental rights of life and liberty. As fully sovereign peoples, their expressed desire to settle should be recognized and affirmed in accordance with national legal obligations and Article 1 of the ICESCR.¹²² It is even possible that migratory routes could be re-established, perhaps with new and revised arrangements with settled communities.

RECOMMENDATIONS

To the Committee on Economic, Social and Cultural Rights:

- Request the Indian Government to submit detailed information on domestic legal remedies, specifically with regard to security of tenure and protection from eviction, available to nomadic communities. In particular, information should be provided on the Land Revenue Act and the accessibility of land for nomadic communities.
- Request the Indian Government to submit statistics on the number of people displaced under the Forest Conservation Act and the Land Acquisition Act and on rehabilitation schemes currently in effect. In addition to these statistics, and in particular if no such data is available, the Government should provide a qualitative report of its policy of displacement and rehabilitation schemes with respect to the UN Guiding Principles on Internal Displacement, paying particular attention to the extent which the affected communities participate in the planning and management of their resettlement.¹²³
- Request all available statistics on the diminishing livelihoods of nomadic communities as a result of displacement.

To the Government of India:

- As stated in Principle 9 of the UN Guiding Principles on Internal Displacement, "States are under particular obligations against the

displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands." Related to this is the fact that the State must immediately fulfill its obligation to promote the right to legal security of tenure as outlined in General Comment 7 of the Committee. This includes: making land records and other associated information accessible, repealing the Habitual Offenders Act, and ensuring transparency and administrative efficiency in all State transactions with the affected communities — in particular by streamlining the process of application for title deeds.

- In this respect the State must also initiate dialogue and a policy of public participation with the Forest Department with regards to environmental conservation schemes. The Forest Conservation Act and Wildlife (Protection) Act should be amended to include provisions that enjoin public consultation with communities affected by conservation measures, and their central involvement in achieving conservation.
- Attempts at forced eviction by settled members of the village communities should be made punishable by law and a schedule of sanctions for such offences should be published. This is a clear and immediate obligation of the Indian government under Article 11(1) of the ICESCR.¹²⁴

¹²² See also CERD, Article 25.

¹²³ See UN Guiding Principles on Internal Displacement, at Principle 28(2).

¹²⁴ See above discussion of forced evictions of slum dwellers, at 7.

- In accordance with Article 6(2) of the ICESCR, the State should establish livelihood-training programmes designed in collaboration with the local organisations, specifically focused to address the specialized needs of the communities.
- General Comment 4 states that adequate housing must include : availability of services, materials, facilities and infrastructure; affordability; habitability; and accessibility.

In keeping with Article 2(2) of the ICESCR, the State must undertake whatever projects are financially feasible for the fulfillment of this right. This should include establishing systems of loans, grants, cooperative schemes and subsidies in order to enable tribes to secure adequate living conditions.

- Law enforcement officials should be re-educated and incidents of unjustified police brutality recorded and sanctioned.

Conclusion

In the case of each of the marginalized groups examined (Dalits, forest dwellers, nomads, riot victims, victims of development-based displacement, the homeless, and victims of urban forced evictions) it is clear that the Government of India has fulfilled neither its obligations of conduct nor of result with respect to Article 11(1) of the ICESCR.¹²⁵ The necessary and immediate steps for the fulfillment of the right to adequate housing have not been taken; to the contrary, the most visible action on the part of the State with respect to many of these communities has been forced eviction, by nature a violation of international human rights law. This and other actions¹²⁶ may be considered a deliberate retrogression from the obligations imposed by Article 11(1) and, in keeping with previous recommendations of the Committee, the authors of this report urge the Committee to request the Government of India to provide full justification for its actions "by reference to the totality of the right provided for in the Covenant and in the context of the full use of the maximum available resources."¹²⁷

In this respect we respectfully note that the omissions and lack of critical analysis that characterized India's past reports to UN bodies should *not* be repeated in any upcoming report to the Committee. For example, India's National Report on the Progress of Implementation of the Habitat Agenda, submitted in 2001 to the Istanbul +5 UN Habitat Conference, devotes only two pages to the issue of secure tenure and in doing so focuses solely on the urban context.¹²⁸ The Report's "Box 7," which describes relocation of slum dwellers in New Delhi and is entitled "Narela: A happy example of relocation and rehabilitation," completely ignores the violations and difficulties at Narela and other sites that were discovered by HIC-HLRN's independent study on the resettlement process in Delhi.¹²⁹ Equally problematic is the fact that the section on environmental management makes no mention of forest conservation or the problems arising from it.¹³⁰

The State may argue that its ability to fulfill the right to adequate housing is limited by lack of resources. While acknowledging the difficulties posed by budgetary constraints,¹³¹ we also note that the Committee has stated that the obligation of progressive realization of rights results in a "minimum core obligation to ensure the satisfaction of...minimum essential levels of each of the rights."¹³² Significantly, the Committee has given the example of a State that deprives any "significant number of individuals...of basic shelter and housing" as "*prima facie* [...] failing to discharge its obligations under the

¹²⁵ See General Comment 3, at para 1 for a brief discussion of the two types of obligations.

¹²⁶ Other examples include the failed implementation of land reform legislation in Gujarat State, the failure to fulfill the right to secure tenure of land for the adivasi and nomad communities, and the failure to provide adequate protection to victims of the Gujarat riots.

¹²⁷ See General Comment 3, at para 9.

¹²⁸ See Government of India Ministry of Urban Development and Poverty Alleviation, India: National Report, Progress of Implementation of the Habitat Agenda (1996-2000) (Government of India 2001) [hereinafter India: National Report], at 15-16.

¹²⁹ India: National Report, at 15.

¹³⁰ See India: National Report, at 31-39.

¹³¹ The State of Rajasthan, for example, was recently warned by the Comptroller and Auditor General of India to avoid an impending "debt trap" due to rising deficits and falling revenues. "Rajasthan falling into debt trap: CAG," The Hindu (5 November 2003).

¹³² General Comment 3, at para 10.

Covenant."¹³³ Both the Limburg Principles and Maastricht Guidelines uphold this view that "resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights."¹³⁴ In turn, the Maastricht Guidelines hold that the "obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard."¹³⁵ International human rights jurisprudence is therefore clear on the fact that India has (1) an obligation to fulfill the minimum essential level of the right to adequate housing, and (2) an obligation to show that the realization of this right has improved over time since it became a party to the ICESCR. Neither of these obligations is mitigated by lack of available resources.

Furthermore, the number of violations of Article 11 that take place because of deliberate State action or because of lack of implementation of domestic legislation cannot be overemphasized. The most noticeable example of such violations of the right to adequate housing is the government's near-systematic reliance on forced evictions in carrying out urban renewal programmes, environmental conservation programmes, and large development projects. This situation is completely unacceptable from the standpoint of India's obligations under the ICESCR.

Finally, as General Comment 3 notes:

"The obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programs for their promotion, *are not in any way eliminated as a result of resource constraints* [emphasis added]."¹³⁶

The contributing organisations therefore repeat our request that the Government of India submit its long overdue report to the Committee on Economic, Social and Cultural Rights as soon as possible. We also urge the Committee to consider our suggested requests for information from the Government. In doing so, we request the Committee to keep in mind that the experiences of these six communities are in many ways representative of violations of the right to adequate housing that occur against similar groups in other parts of the country. Thus the questions we have suggested could be useful for determining the situation of other vulnerable groups in India that could not be mentioned here. Lastly, we request the Committee to pay particular attention to the violations discussed in the present report.

¹³³ General Comment 3, at para 10.

¹³⁴ Maastricht Guidelines, at para 11. See also Limburg Principles, at paras 25-28.

¹³⁵ Maastricht Guidelines, at para 7.

¹³⁶ General Comment 3, at para 11 (emphasis added).

Glossary

CEDAW	– Convention on the Elimination of all forms of Discrimination Against Women
CERD	– Convention on the Elimination of all forms of Racial Discrimination
CESCR	– Committee on Economic, Social and Cultural Rights
CEDAW	– Convention on the Elimination of all forms of Discrimination Against Women
CERD	– Convention on the Elimination of all forms of Racial Discrimination
CESCR	– Committee on Economic, Social and Cultural Rights
CRC	– Convention on the Rights of the Child
CrPC	– Criminal Procedure Code
GOI	– Government of India
HIC	– Habitat International Coalition
HLRN	– Housing and Land Rights Network
ICESCR	– International Covenant on Economic, Social and Cultural Rights
MCD	– Municipal Corporation of Delhi
MoEF	– Ministry of Environment and Forests
NBA	– Narmada Bachao Andolan
NWDT	– Narmada Water Disputes Tribunal
PAP	– Project Affected Person
RAS	– Rapid Assessment Survey
R&R	– Rehabilitation and Resettlement
UDHR	– Universal Declaration of Human Rights

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- Adivasis* – Tribal/indigenous people
- Dalits* – Also referred to as untouchables or *Harijans*. People traditionally outside of the Hindu caste system and therefore considered impure.
- Gram Sabhas* – Village councils
- Khatawahi* – Legal document conferring ownership
- Panchayati Raj* – Local self-government
- Pattas* – Title deeds to land
- Shamianas/pandals* – Large tent
- Taungya* – Term taken from the Burmese Karen dialect referring to a system of raising forest plantations of several commercial timber tree species in India, that adapted traditional slash-and-burn agriculture techniques.

Contributors

Andhra Pradesh Dalitha Bahujana Vyavasaya Vruthidarula Union (APDBVVU) is a trade union active in 15 districts of Andhra Pradesh. The union has a membership of nearly two hundred thousand dalit bahujan agricultural workers and skilled labourers of whom nearly 60% are women. APDBVVU strives to secure for the dalit bahujans their rights and entitlements (including the right to land and livelihood) and to promote leadership within the community, while striving for their emancipation.

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Aashray Adhikar Abhiyan (AAA) is a citizen's initiative to address the problems of the homeless in Delhi - the people sleeping on pavements, rickshaws, *thelas* (two wheel handcarts), flyovers, under the bridges and in parks. AAA has adopted a rights-based approach and takes as its foundation the need to promote and protect the human rights of the homeless. AAA's primary goal is the empowerment of the homeless and the strengthening of their capacity to fight for their own rights. AAA also seeks to increase the accountability of public institutions to all citizens.

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Citizens Initiative is a collective of 39 NGOs working together since late February, 2002, when the brutal and prolonged communal violence in Gujarat began. Rioting included wanton destruction of houses and property, and about 110,000 people were left without homes. Citizen's Initiative is committed to highlighting the impact of the carnage on critical areas, including effects on women, children, the economy and livelihood, and on housing and property.

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Food First Information and Action-Network (FIAN) is an international human rights organisation working on the right to food. FIAN has members in around 60 countries and sections and co-ordinations in 19 countries on three continents. FIAN supports peoples' struggles where the right to food is violated as when people are unjustly evicted from their lands, denied access to productive resources or paid below the minimum wage. In India FIAN is represented through its sections in Tamil Nadu, Uttar Pradesh and West Bengal. FIAN has consultative status with the United Nations.

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Habitat International Coalition-Housing and Land Rights Network (HIC-HLRN) is committed to the full implementation of the human right to adequate housing for all as "a place to live in peace and dignity." HIC-HLRN's South Asia Regional Programme (SARP) is engaged in promoting the legal basis for the human right to adequate housing through its members in India, Nepal, Pakistan, occupied Tibet, Bhutan, Sri Lanka and Bangladesh. SARP focuses on the housing and land rights of people facing eviction, research on women's right to adequate housing and building solidarity for children's right to housing through research, capacity-building and advocacy.

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Kalpavriksh (KV) is a voluntary group working on environmental education, research, campaigns, and direct action. Beginning from a students' campaign to save Delhi's Ridge Forest area from encroachments and destruction in 1979, Kalpavriksh has moved on to work on a number of local, national, and global issues. Kalpavriksh's activities are directed to ensuring conservation of biological diversity, challenging the current destructive path of 'development', helping in the search for alternative forms of livelihoods and development, assisting local people in empowering themselves to manage their natural resources, and reviving a sense of oneness with nature.

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Mines, Minerals & People (mm&P) is an alliance of individuals, institutions and communities concerned with and affected by mining. At present, mm&P members span 16 states and include more than 100 grassroots groups and about 20 diverse support organizations. The alliance focuses on supporting local struggles against the destructive effects of mining through legal and media advocacy, information dissemination, documentation, research and fact finding, developing campaign strategies, sharing skills and technical expertise and through national and international networking.

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Narmada Bachao Andolan (Save Narmada Movement) is a mass based movement of dam-affected people in the Narmada valley opposed to the large-scale displacement of people and destruction of the environment caused by large dams. The NBA supports the use of sustainable alternative technologies for irrigation and power generation. Over the last two decades, the NBA has fought against the Narmada Valley Development Project, which involves the construction of 30 large dams, 135 medium dams and 3000 small dams on the Narmada River.

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National Campaign for Dalit Human Rights (NCDHR) is part of a wider struggle to abolish 'untouchability'. The NCDHR has enlisted grassroots organizations in 14 Indian states and 11 countries to advocate on behalf of the 160 million Dalits who continue to suffer under India's hidden apartheid - living in segregated colonies, performing caste-based occupations, and suffering economic and social deprivation including abuses (or even death) at the hands of the police and higher-caste groups protected by the state.

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National Forum of Forest People and Forest Workers (NFFPFW), otherwise known as the Rashtriya Van Shramjeevi Manch, aims to bring together groups working with forest-dependent people all over India on a common platform and to assist national advocacy and campaigns. Over the last nine years, the forum has organized several workshops and national consultations. Activists representing groups and organizations from across India have participated and identified major issues common to forest people.

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Navsarjan Trust helped to organize Dalits in 2,000 villages to fight the practice of 'untouchability' and to improve their socio-economic conditions. Navsarjan provides services ranging from drinking water to legal advice and job training. The group also has had a special focus on training grassroots community leaders. More than 187 activists, former day labourers and brick makers with little education, have received training and now serve as leaders of the Dalit movement.

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Youth for Unity and Voluntary Action (YUVA) is a voluntary development organisation based in Mumbai since 1984. YUVA aims to reach out in response to issues of the weakest sections of society (pavement dwellers, vulnerable children, women, youth, rural poor and the tribal community). Their work has revolved around creating access and enabling processes to a gamut of rights and opportunities for the marginalized, within the human rights framework. In 20 years YUVA has shaped many interventions to suit the needs of a diverse group of constituents in a constantly changing socio-economic climate.

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AT

28 November 2003

Excellency,

We would like to inform the Government of India that during its 31st session in November 2003, the United Nations Committee on Economic, Social and Cultural Rights noted that no reply has been received to its letter dated 29 November 2002 addressed to the Government of India through the Permanent Mission to the United Nations Office and other international organizations at Geneva.

In this regard, the Committee decided to reiterate its concerns as expressed in the previous letter, a copy of which is attached for your reference. The Committee respectfully urges the State party to submit its long overdue second periodic report as soon as possible.

Accept, Excellency, the assurances of my highest consideration.

S.E. M Hardeep Singh PURI
Ambassador, Permanent representative
Permanent Mission of India to the United
Nations Office and other international
organizations at Geneva
Fax: 022-90686-96

Virginia Dandan
Chairperson of the UN Committee on
Economic, Social and Cultural Rights



HABITAT INTERNATIONAL COALITION
Housing and Land Rights Network

4 May 2004

Virginia Bonoan-Dandan, Chairperson
Committee on Economic, Social and Cultural Rights
Palais des Nations
Geneva, Switzerland

Dear Madam Dandan

We sincerely regret that, once again, the Government of India has failed to submit its long-overdue report to the Committee, originally scheduled for submission on 30 June 1992. In the ensuing twelve years, the respect, protection, promotion, and fulfillment of human rights in India have deteriorated drastically, especially for historically deprived groups of Indians. In particular, we have noted a pattern of increasing violations of the right to adequate housing, as enshrined in Article 11(1) of the Covenant. The State party's report to the Committee would have provided crucial insight into the Government of India's perspective on its obligations to fulfill this and other rights. However, the report's continued absence instead creates an additional impediment to much-needed dialogue between the State and the monitors of human rights, including civil society, but especially the treaty body itself.

HIC-HLRN has collaborated with a diverse group of nongovernmental and community-based organizations upholding the human rights of individuals and peoples in India to provide the present information pertaining to India. We respectfully submit the attached alternate report on the right to adequate housing in India. This report is based on fact-finding missions, reports, media coverage and personal testimonies collected by HIC-HLRN and other contributing organizations—many of which represent networks of other NGOs themselves. It is the third and most updated in a series of alternate reports that have been submitted to the Committee in order to draw attention to the grave living conditions and housing rights conditions across India.

The report provides an overview of seven groups that have been particularly vulnerable to violations of the right to adequate housing in India: the urban poor, forest dwellers, Dalits, victims of the 2002 riots in the State of Gujarat, communities displaced due to large-scale development projects (including large dams and mining projects), the urban homeless, and nomadic communities. In each case, it is clear that violations of the right to adequate housing occur because of a failure on the part of the central government to respect and protect the right to adequate housing. In particular, we would like to draw the Committee's attention to the following violations:

- Near systematic reliance on forced evictions of urban slum dwellers in the name of "reclamation" and "clearance" of government-owned land;
- Failure to provide access to secure tenure for marginalized groups such as forest dwellers, the urban poor, nomads and dalits;
- Failure to follow due process of law in the displacement of hundreds of thousands of people in the name of "development" projects and failure to provide adequate resettlement and rehabilitation packages to those who have been displaced;
- Failure on the part of the Indian courts to protect the right to adequate housing, in particular with respect to their authorization of forced evictions without respect for procedures for prior notice and resettlement, as mandated by India's international human rights obligations;
- Failure to take adequate steps to assess urgent needs of India's homeless population and provide them with basic shelter; and
- The *de facto* criminalization of poor and marginalized groups such as the homeless, slum dwellers, forest dwellers, and nomads, which, in turn, exacerbates problems related to security of tenure.

These violations work to the detriment of the lives of millions of Indians.

We understand that the State has limited resources. However, the number of violations of Article 11 due to deliberate State action cannot be overemphasized. This is perhaps most noticeable in the case of the government's use of forced evictions in carrying out urban renewal programs, environmental conservation programs and large development projects. Furthermore, international human rights law is clear in the India has (1) an obligation to fulfill the minimum essential level of the right to adequate housing, and (2) an obligation to show that this realization is progressive since becoming a party to the ICESCR. Neither of these obligations is mitigated by lack of available resources, and the current situation is completely unacceptable from the standpoint of India's obligations under the ICESCR.

In turn, we request the Committee to issue a formal letter reminding the State of India of its reporting obligations under the ICESCR. The State of India has yet to respond to the Committee's letter of 29 November 2002, and therefore, it seems that additional communications may be needed if India is to take these obligations seriously.

In light of the massive scale of the violations discussed, as well as the fact that they contribute to the multiple forms of discrimination faced by marginalized and vulnerable communities, we would also request that you consider examining India as a nonreporting State party to the Covenant.

As members of Indian civil society, we sincerely appreciate such international efforts to encourage the fulfillment of economic, social and cultural rights.

Madam Dandan, please be assured of our highest consideration,

Habitat International Coalition-Housing and Land Rights Network (India) and its partners: Aashray Adhikar Abhiyan (AAA), Andhra Pradesh Dalitha Bahujana Vyavasaya Vruthidarula Union (APDBVVU), Citizens Initiative, Food First Information and Action-Network (FIAN), Kalpavriksh, Mines, Minerals & People, Narmada Bachao Andolan (Save Narmada Movement), National Campaign for Dalit Human Rights (NCDHR), National Forum of Forest People and Forest Workers (NFFPFW), Navsarjan Trust, and Youth for Unity and Voluntary Action (YUVA) welcome the work of the current session of the Committee on Economic, Social and Cultural Rights.

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**NGO participation in activities of the Committee on Economic,
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E/C.12/1993/WP.14. (Other Treaty-Related Document)**

Convention Abbreviation: CESCR

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

Eighth session

10-28 May 1993

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS

NGO participation in activities of the Committee on Economic, Social and Cultural Rights*

A. Written information

1. The Committee reiterates its long-standing invitation to NGOs to submit to it in writing, at any time, information regarding any aspect of its work.

B. Oral information

2. In addition to the receipt of written information, a short period of time will be made available at the beginning of each session of the pre-sessional working group to provide NGOs with an opportunity to submit relevant oral information to the members of the working group.

* Procedure adopted at 3rd meeting
held on 11 May 1993

3. Furthermore, the Committee will set aside part of the first afternoon at each of its sessions to enable it to receive oral information provided by NGOs. Such information should: (a) focus specifically on the provisions of the Covenant on Economic, Social and Cultural Rights; (b) be of direct relevance to matters under consideration by the Committee; (c) be reliable, and (d) not be abusive. The relevant meeting will be open and will be provided with interpretation services, but will not be covered by summary records. The purposes are: to enable the Committee to inform itself as fully as possible; to probe the accuracy and pertinence of information which would most probably be available to it anyway; and to put the process of receiving NGO information on a more transparent and open basis than is permitted by the current approach.
4. ngos wishing to present oral information should inform the Committee in advance. In cases in which the Committee receives more expressions of interest than can be dealt with in the limited time available, the Chairperson of the Committee, in consultation with the Bureau, shall determine on an objective basis which NGOs will be invited to make an oral presentation.
5. To the extent that information provided to the Committee in writing under these procedures is referred to by any member of the Committee in questions posed to the State party, the relevant information should be available for consultation by the Government concerned and all other interested parties.
6. The Committee requests its Chairperson, in conjunction with the secretariat, to make these procedures as widely known as possible.

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Office of the United Nations High Commissioner for Human Rights
Geneva, Switzerland

HIC-HLRN Publications

Fact-Finding Reports

Impact of War and Forced Evictions on Urbanization in Turkey

Violations of Housing Rights

Fact-finding Report no. 1 (1996)

Habitat International Coalition (HIC)

In Quest of Bhabrekar Nagar

A report to enquire into demolitions in Mumbai, INDIA

Fact-finding Report no. 2 (1997)

Habitat International Coalition (HIC)

Fact-finding Mission to Kenya on the Right to Adequate Housing

A report on slum conditions, evictions and landlessness

Fact-finding Report no. 3 (2001)

HIC-HLRN, Sub Saharan Regional Program¹

Resettlement on Land of Bhutanese Refugees

A report on new threats to repatriation

Fact-finding Report no. 4 (2002)

HIC-HLRN, South Asia Regional Program (SARP)

Restructuring New Delhi's Urban Habitat:

Building an Apartheid City?

A report on the resettlement process of Delhi, INDIA

Fact-finding Report no. 5 (2002)

HIC-HLRN, South Asia Regional Program (SARP)²

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

A report on ethnic conflict in Gujarat, INDIA

Fact-finding Report no. 6 (2002)

HIC-HLRN, South Asia Regional Programme (SARP); Youth for Unity and Voluntary Action (YUVA)³

¹ In collaboration with Human Rights Monitoring Group (HURIMOG)

² In cooperation with Sajha Manch, New Delhi

³ Mission conducted at the request of Citizen's Initiative, Ahmedabad

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

A report on housing and land rights violations and inadequate rehabilitation
Fact-finding Report no. 7 (2003)

HIC-HLRN, South Asia Regional Programme (SARP)

Research Reports and Training Manuals

Trade, Investment, Finance and Human Rights

Essential Documents

Research Report (2001)

International NGO Committee on Human Rights in Trade and Investment (INCHRITI)

Children and Right to Adequate Housing: A Guide to International Legal Resources

Research Report and Training Manual (2002)

HIC-HLRN, South Asia Regional Programme (SARP) & Centre for Child Rights (HAQ)

Dispossessed: Land and Housing Rights in Tibet

Research Report (2002)

Tibetan Centre for Human Rights and Democracy (TCHRD)⁴

Community Action Planning: Processes – Ideas – Experiences

Manual for human rights based slum upgradation (2002)

HIC-HLRN, South Asia Regional Programme (SARP); YUVA; PDHRE

Methodology for Monitoring the Human Right to Adequate Housing: The "Tool Kit"

Indicator and benchmarks to assess realization and violations of the Right to Adequate Housing

(forthcoming publication)

HIC-HLRN

Urgent Action: HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing (En, Fr, Ar, SP)

Training Manual

HIC-HLRN, Middle East/North Africa (MENA) Regional Programme

Standing up Against the Empire: A Palestine Guide: From Understanding to Action

Report of a seminar organized at the World Social Forum III; Porto Alegre

HIC-HLRN, Middle East/North Africa (MENA) Regional Programme

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

Working Paper (2004)

HIC-HLRN, South Asia Regional Programme (SARP)

⁴ In collaboration with HIC-HLRN

**Arabic translation for the Children and Right to Adequate Housing:
A Guide to International Legal Resources**

Research Report and Training Manual (2004)

HIC-HLRN & Centre for Child Rights (HAQ)

Reports to UN Bodies

Child in Search of the State

Alternative report to the India country report on the implementation of the Right to Housing as enshrined in the Convention on the Rights of the Child (1998)

Habitat International Coalition (HIC); Laya, Human Rights Foundation (HRF) and Youth Unity for Voluntary Action (YUVA)

Composite of Economic, Social and Cultural Rights Conditions of the Indigenous Palestinian People under Israel's Jurisdiction and Control

Joint parallel report to the UN Committee on Economic, Social and Cultural Rights (2001)

HIC-HLRN, Middle East/North Africa (MENA) Regional Programme with seven other Palestinian, Israeli and international NGOs⁵

Implementation of the International Convention on the Rights of the Child: Israel Issues affecting the Indigenous Palestinian People under the State of Israel's Jurisdiction and Control

Joint parallel report to the UN Committee on the Rights of the Child (2002)

HIC-HLRN, Middle East/North Africa (MENA) Regional Programme with three other Palestinian NGOs⁶

Human Right to Adequate Housing in India

Joint parallel report to the UN Committee on Economic, Social and Cultural Rights (2002)

HIC-HLRN, South Asia Regional Programme (SARP) with Indian NGOs⁷

⁵ Adalah, the Legal Center for Arab Minority Rights in Israel; Association of Forty (Israel); Badil Resource Center for Palestinian Residence and Refugee Rights (Bethlehem); Boston University Civil Litigation Program (USA); LAW Society for the Protection of Human Rights and the Environment (Jerusalem); Palestinian Center for Human Rights (Gaza.); World Organization against Torture (Geneva, Switzerland)

⁶ Defence for Children International (Palestine); LAW Society for the Protection of Human Rights (Jerusalem) under the State of Israel's Al Mezan Center for Human Rights

⁷ National Forum for Forest People and Forest Workers, Muktidhara, YUVA, Sajha Manch, Narmada Bachao and Kalpavriksh

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

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

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

What are HLRN's Objectives?

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

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

To attain these objectives, HLRN member services include:

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

To become a member of HIC-HLRN log on to www.hlrn.org



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