



## The Draft Model Tenancy Act 2019: Comments

New Delhi, 2 August 2019

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Housing and Land Rights Network India (HLRN) would like to commend the Ministry of Housing and Urban Affairs for taking the initiative to develop a model tenancy law for states to adopt. Given the acute housing shortage in India and the growing unaffordability of access to, and ownership of, housing across the country, the issue of rental housing is very important. It is also of great significance given the fact that about 28 per cent of housing in urban areas in the country consists of rental housing (though it is higher in some cities and also among the population living in ‘informal settlements’) and that the national Housing for All–2022 scheme—Pradhan Mantri Awas Yojana (PMAY)—does not include or address the issue of rental housing.

While the intention of the government may be to bring the over 11 million vacant houses (12 per cent of the housing stock) into the rental market, the model law does not discuss the various mechanisms required to promote rental housing, especially for those who need it most. The draft law also tends to be more favourable to the interests and rights of landowners over the rights of tenants. This is despite the fact that the introduction to the law mentions “balancing the interests of landowners and tenants.”

Though the introduction also talks about promoting “balanced rental housing,” including through developing different options of dormitories, hostels, co-living arrangements, and employee housing, the draft model law does not devote any space to discussing these options. It also does not discuss different rental tenure arrangements, including for migrants, students, informal sector workers, and the urban poor. This is the major shortcoming of the draft Model Tenancy Act 2019: **It is completely silent on the issue of social rental housing.** It tends to focus only on market solutions and on the middle and upper-middle classes who can afford access to the rental market, rather than on economically weaker sections (EWS) and low-income groups (LIG) that comprise a large percentage of tenants/sub-tenants/rent-sharers and face the greatest deprivation in terms of access to adequate housing.

While the mandatory requirement for written contracts and online registration of all tenancy agreements in the draft law could help to increase transparency and accountability of landowners and also ensure greater protection for tenants, it also poses the risk of marginalizing those who are not literate and do not have access to digital technology and the means of accessing such information. Furthermore, the law ignores the reality of urban India that over 71 per cent of households living in rental accommodation do not have written contracts (National Sample Survey 2012), largely due to the underlying informality of the accommodation. Any model law thus needs to be more flexible in accommodating the specific conditions and concerns, including the need for security of tenure, of lower-income groups, while preventing their exploitation and dispossession.

The requirement for state intervention at each stage of the tenancy process also seems excessive.

While cities such as Amsterdam, Barcelona, Berlin, London, New York, and Paris have recently introduced different forms of rent control in order to protect low-income families from being evicted from their homes, India’s model tenancy law aims to completely abolish all forms of rent control and the social welfare dimensions of housing. This is disturbing given that, according to India’s international obligations and as directed by the Supreme Court of India, housing needs to be viewed as a human right and a social good, not just as a marketable commodity.

## Recommendations from Housing and Land Rights Network:

- 1) Any model tenancy law needs to incorporate a **human rights approach**, which upholds the right to **housing as a human right**, as mandated in international law that India has ratified.
- 2) The law needs to include a strong **section on social rental housing**, which recognizes that the realization of the human right to adequate housing requires offering solutions, along a continuum of housing, to socially and economically deprived and marginalized sections. These options, including hostels, short-stay homes, collective housing arrangements, and community land trusts, need to be described along with information on the means to promote and access them. This also requires a strong commitment of the state to ensuring access of all to rental housing and not leaving it to the market, which does not take care of the economically and socially marginalized and vulnerable.
- 3) Legal **security of tenure** is an integral element of ‘adequate housing,’ as established by General Comment 4 of the United Nations (UN) Committee on Economic, Social and Cultural Rights (1991)<sup>1</sup> and expanded further in the ‘Guiding Principles on Security of Tenure for the Urban Poor.’<sup>2</sup> All forms of rental housing must thus provide tenure security to residents. This requirement should be emphasized in the model tenancy law, which could also refer to and cite the Guiding Principles mentioned above.
- 4) The law should **incorporate best practices** and successful interventions to promote social rental housing from other countries, such as Austria, Brazil, Germany, Singapore, South Korea, Spain, and Switzerland.
- 5) In order to protect the interests of tenants, especially EWS/LIG, there should be **controls on the permissible amount of annual rent increase**. Such increase should, under no circumstances be dictated by market forces that are fuelled by uncontrolled speculation. The model law should make it mandatory for state governments to regulate the housing market such that the rental sector, especially for EWS/LIG, is not prey to market forces that catalyze evictions and loss of housing. The law should include protection from forced evictions and be consistent with the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.<sup>3</sup>
- 6) A key element to guarantee equitable access to adequate rental housing is **affordability**. The model tenancy law should thus include a comprehensive income-based definition of ‘affordability’ for rental housing to ensure inclusion of lower-income groups in accessing rental housing options.
- 7) For EWS/LIG, including migrants and homeless persons, the government should provide **access to rental subsidies** and other forms of housing finance to ensure access to adequate rental housing. This could be in the form of rental vouchers or other measures that could be discussed in consultation with the affected population. Low-interest loans and other incentives could also be provided to landowners to encourage them to rent housing to low-income groups and to upgrade housing, including making it disaster-resistant and more energy-efficient. In this regard, the UN ‘Guiding Principles on Security of Tenure for the Urban Poor’<sup>4</sup> include recommendations and examples that could be adopted in the model law.

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<sup>1</sup> General Comment 4, ‘The right to adequate housing,’ United Nations Committee on Economic, Social and Cultural Rights, 1991. Available at: [https://www.hlrn.org.in/documents/CESCR\\_General\\_Comment\\_4.pdf](https://www.hlrn.org.in/documents/CESCR_General_Comment_4.pdf)

<sup>2</sup> Guiding Principles on Security of Tenure for the Urban Poor, A/HRC/25/54, 2013. Available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/25/54](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/25/54)

<sup>3</sup> Basic Principles and Guidelines on Development-based Evictions and Displacement, A/HRC/4/18, February 2007. Available at: [http://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf)

<sup>4</sup> Supra note 2.

- 8) **Homeless families and individuals should be prioritized** in all state housing schemes, including for social rental housing programmes. Shelters are only temporary arrangements and do not permit anyone to live a life with dignity, security, safety, and privacy. It is thus important for any law related to housing to ensure that homeless persons, who are among the most marginalized in society, have access to adequate, permanent housing options, including different forms of rental housing.
- 9) The model law should include a **section on non-discrimination** that prohibits discrimination in rental housing for women, especially single women; members of the LGBTQI+ community, including transgender persons; religious minorities; Dalits/Scheduled Castes; and others, who are denied access to housing across the country.
- 10) The distinction between a Rent Court and Rent Tribunal is not clear in the law and could lead to confusion among both tenants and landowners. It thus needs to be clarified, including in terms of functions and access. Also, lengthy arbitration procedures could lead to a delay in justice for aggrieved persons.
- 11) The requirement for the Aadhar number of the landowner and tenant goes against The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act 2016 as well as the judgment of the Supreme Court on this issue, and should be deleted from the First Schedule of the model law. Alternative forms of identity should be permissible, also keeping in mind that homeless persons and other EWS/LIG persons may not have a PAN card.
- 12) The **convergence of rental housing schemes and arrangements with PMAY** should also be discussed in the model law, given that the government is focusing on providing 'Housing for All' by 2022 under PMAY, which is silent on rental housing.

It would be more useful if a comprehensive, human rights-based policy is first developed, which explains the major challenges and proposed solutions. Any law that aims to be a model for states to adopt must be inclusive, equitable, and comprehensive. It should also be linked with the broader goal of providing housing for the most needy and marginalized in the country. In its attempt to promote rental housing, the law should not exclude those who most urgently need access to adequate rental housing. In this regard, India should consider developing instead a model **right to housing law**, as per the recommendation of the UN Special Rapporteur on adequate housing,<sup>5</sup> which would include the provision for providing access to adequate rental housing along a continuum of housing rights.

Prior to finalization of any law/bill, HLRN calls for extensive consultations across the country with civil society, independent institutions, and representatives of different sections of society, including through public hearings, such that the model tenancy law is the result of a democratic process.

Housing and Land Rights Network hopes that the Ministry of Housing and Urban Affairs will seriously consider these recommendations, which are aimed at promoting equity and ensuring 'Housing for All' in the country, with a focus on the most marginalized.

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<sup>5</sup> Report of the Special Rapporteur on Adequate Housing, Mission to India, January 2017, A/HRC/34/51/Add.1. Available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/51/Add.1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/51/Add.1)