

# Human Rights to Adequate Housing and Land in India

STATUS UPDATE 2012



HOUSING AND LAND RIGHTS NETWORK  
Habitat International Coalition - South Asia

## **HOUSING AND LAND RIGHTS NETWORK**

Housing and Land Rights Network (HLRN) is an integral part of the Habitat International Coalition (HIC). It works for the recognition, defence, promotion and realisation of the human rights to adequate housing and land. This involves ensuring a safe and secure place for all individuals and communities to live in peace and dignity. HLRN especially focuses on promoting and protecting the rights of marginalised and discriminated communities, women and children.

The South Asia office of HLRN was established in 1999 in New Delhi, and works to achieve its goals through: advocacy, research, human rights education and outreach, through network building at local, national and international levels.

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# **Human Rights to Adequate Housing and Land in India**

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WITH RELEVANT RECOMMENDATIONS FROM INDIA'S SECOND  
UNIVERSAL PERIODIC REVIEW (UPR) AT THE UNITED NATIONS HUMAN  
RIGHTS COUNCIL (SEPTEMBER 2012)



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# INTRODUCTION

The United Nations (UN) Human Rights Council, the UN's highest inter-governmental policy making body on human rights, initiated a mechanism to monitor the human rights records of all member states of the UN. This mechanism, called the Universal Periodic Review (UPR), is a peer review process, under which each country's human rights record is examined in Geneva every four years. India has undergone two reviews – in May 2008 and May 2012.

As preparation for India's second UPR in May 2012, the *Working Group on Human Rights in India and the UN* (WGHR), of which *Housing and Land Rights Network* (HLRN) is a member, published a report<sup>1</sup> that attempts to give a comprehensive overview of the human rights situation in India.

After the examination of India's human rights record in May 2012, the UN Human Rights Council proposed 169 recommendations to India. In September 2012, the Government of India agreed to adopt only 67 of these recommendations.<sup>2</sup> The one recommendation related to housing ("*Continue to implement plans adopted in the area of housing and rehabilitation, particularly the plan launched in 2011 aimed at preventing the construction of new slums*" – proposed by Algeria) was rejected by the Indian government. There are, however, a number of recommendations accepted by India that can be used to place responsibility on the Indian government to implement its obligations on the rights to adequate housing and land. It is also important to view the recommendations from the Human Rights Council alongside those from other UN bodies. The UN Committee on Economic, Social and Cultural Rights, for instance, made explicit recommendations on housing, forced evictions and rehabilitation during its review of India in 2008.

This document presents the section on the *human right to adequate housing and land* contributed by HLRN to the WGHR report. It includes questions and recommendations for the Government of India proposed for the UPR process by HLRN. It also includes those recommendations accepted by the Government of India related to economic social and cultural rights, especially those concerning poverty eradication, socio-economic development, water and sanitation.

The Indian government needs to adopt adequate measures to ensure that all accepted recommendations are put into action. The government has to report to the UN Human Rights Council on the progress made in implementation of these recommendations at its next Universal Periodic Review in 2016. HLRN will work to pressure the government to ensure that the rights to adequate housing and land are included under the ambit of the recommendations on economic, social and cultural rights. The government has a legal obligation to meet its international and national human rights commitments.

1 *Human Rights in India: Status Update 2012*, published by Working Group on Human Rights in India and the UN. This report was submitted to the United Nations Human Rights Council for India's second Universal Periodic Review in May 2012. An updated version was released in India in December 2012. Available at: [www.wghr.org](http://www.wghr.org).

2 The recommendations are contained in: Report of the Working Group on the Universal Periodic Review: India, UN Human Rights Council, UN Doc. No. A/HRC/21/10, Add. 1, 17 September 2012. For more information on India's second UPR, see: Report of the Working Group on the Universal Periodic Review, UN Doc. No A/HRC/8/26, 23 May 2008: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A\\_HRC\\_8\\_26\\_India\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A_HRC_8_26_India_E.pdf).

# Human Right to Adequate Housing

The human right to adequate housing is guaranteed in international law and in the Directive Principles of the Constitution of India. It has also been upheld by the Supreme Court, in various judgements, as an integral part of the right to life. The majority of the Indian population, in urban as well as rural areas, however, lives in extremely inadequate and insecure conditions.

Not taking into account displacement due to armed and ethnic conflict, India is estimated to have the highest number of people displaced annually as a result of ostensible ‘development’ projects. Independent experts estimate the number of those displaced by such projects since India’s independence (1947), at between 60 and 65 million.<sup>3</sup> This amounts to around one million displaced every year since independence. Of these displaced, over 40% are tribals and another 40% consist of Dalits and other rural poor.<sup>4</sup>

The vast majority of the displaced have not received adequate resettlement. The National Human Rights Commission’s (NHRC) stakeholders’ report for India’s second Universal Periodic Review (UPR) states that, “NHRC’s monitoring finds that usually those displaced are given neither adequate relief nor the means of rehabilitation.”<sup>5</sup>

## Urban Housing and Living Conditions

The current paradigm of urbanisation being promoted by the Indian government, including schemes such as the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), contrary to the rhetoric, has extremely limited space and resources for the poor, with a continued focus on large-scale infrastructure development. While urban land is being diverted for profitable real estate and infrastructure projects, legislative tools are commonly used to condemn the urban poor as ‘illegal encroachers.’ The housing that has been built under JNNURM for economically weaker sections is generally on the peripheries of urban areas, very far from people’s work places, schools and hospitals, and is thus not viable and does not meet the criteria of ‘adequate housing’ either. The *Interest Subsidy Scheme for Housing the Urban Poor* which commenced in 2008 has benefited only 8,734 people as against the 2012 target of 3,10,000. Similarly, only about 40 per cent of houses planned for the poor under JNNURM for the period 2005-2012 have been built.<sup>6</sup>

The national urban housing shortage estimated at the end of India’s Tenth-Five Year Plan was 24.7 million while for the Eleventh Five-Year Plan period (2007–2012) it was estimated to be 26.53 million; around 99% of this pertains to the economically weaker sections and low income groups. No comprehensive housing scheme, however, exists for the urban poor as yet. The current proposed national scheme of *Rajiv Awas Yojana* aimed at providing financial assistance to states willing to assign property rights to slum dwellers for provision of decent shelter and basic civic and social services for slum redevelopment must also address the acute housing shortage and backlog, and focus on the provision of adequate low-cost housing.

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3 Planning Commission, Government of India, *The Draft Approach Paper for the Twelfth Five-Year Plan* [states this number to be 60 million], August 2011.

4 Walter Fernandes, *Development-induced Displacement and Human Rights*, Seven Sister’s Post, 24 November 2011, available at: <http://www.sevensisterspost.com/epaper/24.11.11.pdf>.

5 NHRC, *India Submission to the UN Human Rights Council for India’s Second Universal Periodic Review*, available at: <http://nhrc.nic.in/Reports/UPR-Final%20Report.pdf>.

6 *False ceiling that hides nothing*, The Hindu, available at: <http://www.thehindu.com/opinion/op-ed/false-ceiling-that-hides-nothing/article4035517.ece>.

A recent report by the Technical Group on Urban Housing Shortage (2012-17)<sup>7</sup> mentions ‘houseless households and those living in unacceptable conditions’ as being in ‘housing poverty,’ and being unable to enter the housing market to claim ownership or acquire rental housing. It also raises the very important issue of lack of state intervention for providing housing for the homeless.

In the absence of affordable and low cost housing options, majority of the urban poor (around 60% in Mumbai and 50% in Delhi) are forced to live in overcrowded slums/informal settlements without legal security of tenure and access to basic services, including water and sanitation, and often at great risk to their health. By mid-2011, India’s urban slum population was estimated at 158.42 million.<sup>8</sup>

Those who cannot afford a space in a slum continue to remain homeless, being forced to live on pavements, railway platforms, under flyovers, and in other precarious conditions. The Supreme Court of India and the High Court of Delhi have played a very positive role through progressive interim orders protecting the rights of the homeless and calling for state action. While this has resulted in positive responses from a few state governments, the failure to implement these orders is widespread, and India’s homeless population continues to rise and faces exclusion from most government schemes. Homeless people are routinely criminalised and brutalised by the police, including through targeted acts of violence and the implementation of the *Bombay Prevention of Begging Act, 1959*.<sup>9</sup>



Homeless Residents Sleeping out in the Cold, Jama Masjid, Delhi

### High Court of Delhi: Suo Moto Case on Homelessness

On 22 December, 2009, the Municipal Corporation of Delhi (MCD) pulled down a temporary tent shelter for the homeless at Rachna Golchakkar (Pusa Roundabout). Shortly thereafter, it was reported that two of the evicted persons died due to the cold. Following their deaths, on 4 January, 2010, a coalition of groups working on homelessness in Delhi – Shahri Adhikar Manch: Begharon Ke Saath (SAM: BKS – Urban Rights Forum: With the Homeless) organised a press conference on the human rights violations of the homeless. The story received extensive media coverage, and on 6 January, 2010, the former Chief Justice of the High Court of Delhi issued a notice, suo moto, to the MCD and Delhi Government, seeking an explanation for the demolition of the shelter.

<sup>7</sup> *Report of the Technical Group on Urban Housing Shortage (2012-17)*, National Buildings Organization, Ministry of Housing and Urban Poverty Alleviation, Government of India, September 2012.

<sup>8</sup> *Report of the Committee on Slum Statistics/Census*, National Buildings Organization, Ministry of Housing and Urban Poverty Alleviation, Government of India, 2010.

<sup>9</sup> The *Bombay Prevention of Begging Act, 1959* is in force in 18 states and two Union Territories in India. Other states have different anti-vagrancy laws.

After the High Court took up the matter [writ petition (civil) 29/2010], the Supreme Court Commissioners in the Right to Food Case [I.A. No. 94 in writ petition (civil) No. 196 of 2001], sent a letter to the apex court explaining the vulnerability of homeless citizens to the extreme cold, the increase in starvation-related deaths in winter and the negligence by the Government of Delhi. It proposed the setting up of 100 temporary shelters and 500 community kitchens in the city within a week, and 140 permanent shelters by the end of December 2010. On 20 January, 2010, the Supreme Court ordered the Delhi government to provide both shelter and food to the city's homeless immediately. A week later, the apex court issued notices to all state governments in the country to provide information on the facilities for the homeless in their respective states. According to the order, all state governments are required to build at least one well-equipped shelter per 100,000 population. These shelters are supposed to be functional throughout the year on a 24-hour basis.

The High Court of Delhi has (from January 2010 to December 2012) passed 46 interim orders protecting the rights of Delhi's homeless. This has led to several improvements, including in the number of shelters for the homeless. The Supreme Court continues to monitor the status of services for the homeless across India. Both cases are ongoing and full implementation of the progressive orders of both courts by all state governments could lead to a significant amelioration in the condition of homelessness in the country.

Homelessness and the crisis of inadequate housing are further exacerbated by regular forced evictions and slum demolitions across the country. Most of these are carried out in the name of 'development' such as urban 'renewal' schemes, city 'beautification' projects, real estate development, and sporting events like the 2010 Delhi Commonwealth Games that displaced around 200,000 people,<sup>10</sup> which included many persons of Scheduled Castes. An illustrative example is the slum cluster of 368 families of Dalit families at Jangpura's Barapullah Nullah, New Delhi, which was demolished to construct a parking area for the Commonwealth Games.



Forced Eviction: Baljeet Nagar, New Delhi, March 2011

Forced evictions are generally carried out without due process or any rehabilitation. In the few cases where resettlement is provided, the sites are located very far from people's original places of residence, work, education and healthcare. People are not consulted and the quality of housing and services at most resettlement sites violates human rights standards. Kannagi Nagar, Okkiyum Thoraiykkam, located outside Chennai, is Asia's largest resettlement site in which 15,000 evicted families from 68 slums have already been relocated. The absence of adequate rehabilitation and feasible alternative housing options, forces many to become homeless and live on the streets.

<sup>10</sup> According to a fact-finding mission conducted by Housing and Land Rights Network, Delhi. The report titled, *Planned Dispossession: Forced Evictions and the 2010 Commonwealth Games*, is available at: [www.hic-sarp.org](http://www.hic-sarp.org).



“Given the relentless growth of urban population and the difficult economic environment for the poor, the housing problem will further worsen unless concerted efforts are taken to ameliorate the living conditions of the vast majority of vulnerable sections of society, i.e. the slum dweller/urban poor.”<sup>11</sup>

Unchecked real estate speculation contributes to escalating prices, which makes housing and property more and more unaffordable for the majority, resulting in people being forced to live in inadequate conditions and without security of tenure.

## Rural Housing, Land, and Living Conditions

The total national rural housing shortage for the Eleventh Five-Year Plan period (2007-2012) was estimated at 47.43 million, of which 90% was for ‘below poverty line’ households. The lack of adequate investment in rural housing, livelihoods and development, along with large-scale displacement, a severe agrarian crisis, and growing landlessness and homelessness, contribute to the majority of the rural poor living in grossly inadequate conditions.

*Indira Awas Yojana*, a rural housing scheme for ‘below poverty line’ families, especially of Scheduled Castes and Scheduled Tribes, has failed to reach the poorest of the poor, including the landless. The national report of the Government of India for India’s second Universal Periodic Review provides that “since inception, 27.3 million houses have been constructed at an expenditure of INR 795 billion (USD 14.8 billion) (until January 2012).” It also claims that, “there is high degree of satisfaction with this scheme since beneficiaries participate in the construction of their own houses”.<sup>12</sup> While *Indira Awas Yojana* contains certain progressive elements such as mandating release of funds in instalments and registration of houses in the names of women, it needs to be implemented better while ensuring that the process of beneficiary selection is accurate and that the neediest, including the landless, are able to benefit. An evaluation done for the Planning Commission has found lack of quality control under the scheme, even in seismic zones. The safety of residents and lack of sanitation remain serious concerns under the scheme.<sup>13</sup> The recent announcement of the Ministry of Rural Development to improve the functioning and implementation of *Indira Awas Yojana* is welcomed. This includes a proposal to increase the per unit allocation of Rs. 45,000 (USD 900) to Rs. 75,000 (USD 1500), to provide additional funds to build toilets, and to extend the scheme to the landless poor.

## Displacement from Infrastructure and other Projects

Large infrastructure projects, including dams, ports and mining, environmental conservation projects, and designation of large areas as tax-free Special Economic Zones (SEZs), have been responsible for the displacement of millions of rural families, most of whom have not received rehabilitation. A total of 582 SEZs have been formally approved under the *Special Economic Zones Act, 2005* across India.<sup>14</sup>

The majority of natural resource rich areas in India are occupied by indigenous peoples (tribals/adivasis) who face the worst onslaught of large dams, mining, and other natural resource extraction projects. States like Chhatisgarh,

11 *Report of the Committee on Slum Statistics/Census*, National Buildings Organization, Ministry of Housing and Urban Poverty Alleviation, 2010.

12 *National report submitted in accordance with paragraph 5 of the Annex to Human Rights Council resolution 16/21: India, A/HRC/WG.6/13/IND/1*, UN General Assembly, 8 March 2012, para. 57.

13 National Human Rights Commission, *Submission to India’s Second Universal Periodic Review*, available at: [http://www.nfhsindia.org/nutrition\\_report\\_for\\_website\\_18sep09.pdf](http://www.nfhsindia.org/nutrition_report_for_website_18sep09.pdf).

14 SEZ India, available at: <http://www.sezindia.nic.in/writereaddata/pdf/StatewiseDistribution-SEZ.pdf>.

Jharkhand, Andhra Pradesh, Odisha, and the north-eastern states of Manipur, Meghalaya, Sikkim, Arunachal Pradesh, Mizoram, and Tripura, in particular, face acute threats of displacement due to such projects. In Arunachal Pradesh itself, 148 Memorandums of Understanding have been signed to construct dams. The *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006* (Forest Rights Act), a progressive law aimed at recognising rights of forest dwellers, is not being adequately implemented and many tribals are being denied their right to forest resources. As of 30 September 2011, of the 2,808,494 claims of land titles considered, a staggering 1,577,831 claims (56.1%) have been rejected.<sup>15</sup> Most of the displaced in India constitute the rural poor, marginal farmers, fisher folk and tribals/advivasis, who continue to face severe displacement threats.<sup>16</sup> The recent amendment to the rules for the implementation of the *Forest Rights Act* in September 2012 are a positive development, as they provide greater clarity on provisions relating to recognition of forest dwellers' rights to conserve and manage community forest resources, including improved access to minor forest produce. The revised rules also give more powers to *gram sabhas* (village level units of self-governance) to ensure sustainable use of these resources.

The Eleventh Five-Year Plan clearly identified that, "Major alienation of tribal land in the scheduled areas has taken place through the means of compulsory acquisition using the government process of land acquisition. The present arrangements of resettlement and rehabilitation are detrimental and prejudicial to the interests of the tribals. The process of erosion of corpus of tribal land continues at an accelerated pace under the new economic dispensation while the policy options are being debated".<sup>17</sup>

### The POSCO Project, Odisha

In 2005, the Government of Odisha signed a Memorandum of Understanding (MoU) with the South Korean conglomerate Pohang Steel Company (POSCO)—the world's third largest steel company—for setting up an export-oriented integrated steel plant, captive power plant, and marine port near Paradeep, Jagatsinghpur District, Odisha. It is supposedly the largest foreign direct investment in India with a total investment of USD 12 billion. The Government of Odisha will grant POSCO mining lease rights for 30 years that will ensure an adequate supply of 600 million tonnes of iron ore to POSCO. The costs of this operation for POSCO have been estimated at less than 1% of the prevailing global market price for iron ore.

4,000 acres of land have been earmarked in Ersama block of Jagatsinghpur District for the purpose of setting up the steel project and associated facilities. The land that would be required for the railway, road expansion and mines is not included in this. The project will have large-scale, irreversible socio-economic and environmental impacts. The proposed plant and port will adversely affect 11 villages and hamlets in three Gram Panchayats (village councils) in Jagatsinghpur District, namely – Dhinkia, Nuagaon and Gadakujang. As per the local leadership of the movement against POSCO, more than 4,000 families and a population of around 22,000 will be affected by the project. These include all those persons directly dependent on betel vine cultivation, pisciculture, cashew-nut cultivation and fishing in Jatadhari Muhana – the proposed site of the port. The MoU signed between the Odisha government and POSCO establishes that the government has agreed to transfer resources worth millions for almost no returns to the state exchequer.

For the last six years, villagers of Jagatsinghpur District have been consistently protesting against the establishment of the steel and captive power plant by POSCO. In response to the villagers' protests, the state government and administration, allegedly in collusion

15 Ministry of Tribal Affairs, *Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 30th September, 2011]*, available at: <http://www.tribal.nic.in/writereaddata/mainlinkFile/File1317.pdf>.

16 Planning Commission, Government of India, *Draft Approach Paper for the Twelfth Five-Year Plan*, August 2011. The Special Rapporteur on the right to food, Jean Ziegler, also stated that around 40 – 50% of the displaced in India are tribal people though they make up only eight per cent of the population (See report of the Special Rapporteur on the Right to Food, Jean Ziegler, Mission to India, E/CN.4/2006/44/Add.2).

17 Planning Commission of India, Government of India, *Eleventh Five-Year Plan (2007-2012)*, 2007.

with POSCO, sent police and paramilitary forces, which in some instances used excessive force against the resisters. The government has engaged in grave violations of laws, democratic processes and human rights, which include use of state force and intimidation to quell dissent against the POSCO project, setting up of barricades to prevent free movement, attempts of forced evictions, and account of loss of land, housing and livelihood. The numerous instances of human rights violations reported against the police include beatings, arrests, shootings, torture of suspected anti-POSCO protestors, and filing of false cases against them, as well as arbitrary arrest and detention of one of the leaders of the anti-POSCO movement. To date 152 cases have been registered against the villagers by the government; 825 warrants have been issued, of which 340 are for women.

On 29 November 2007, a peaceful protest of the anti-POSCO movement was attacked by private/corporate militia and at least 17 anti-POSCO protestors were injured. On 21 June 2008, a bomb was thrown on anti-POSCO villagers, killing a villager Dula Mandal, and severely injuring Dhruva Sahani. Similarly, more than 100 injuries occurred on 15 May, 2010, which were caused by firing of rubber bullets by police forces during a cruel dispersal of protesters, violating the constitutional right to dissent. Villagers refrain from moving out of the village, even for medical treatment, for fear of getting arrested.<sup>18</sup> On 23 December, 2011, Mr. Narayan Reddy was arrested, brought before a local court, and kept in custody for two weeks after he was falsely charged with murder and is reportedly being held in connection with violent incidents among peaceful anti-POSCO protesters and workers engaged by a contractor group. During the clashes one person died and 25 protesting villagers were seriously injured.<sup>19</sup>

In July 2010, a four member committee was set up by the Ministry of Environment and Forests to investigate the status of implementation of existing legislation on environmental issues, including the Forest Rights Act, 2006 (FRA) and Coastal Regulation Zone (CRZ) rules by POSCO India Pvt. Ltd. Three of the four members of the committee observed that environmental laws were being violated and provisions of the FRA were not followed. The report stated that there are grave violations of environmental laws and forests rights in addition to fabrication of evidence and suppression of information. The committee recommended the prosecution of the responsible authorities who violated the environmental laws, as well as the provisions of FRA. On 2 May 2011, the Government of India instead of accepting these recommendations, gave a forest and environmental clearance to the POSCO project. On 30 March 2012, the National Green Tribunal, however, suspended the environmental clearance accorded to POSCO.

An estimated 13 to 18 million families in rural India today are reported to be landless, of which about eight million lack homes of their own.<sup>20</sup> Almost 80% of the agricultural population owns only about 17% of the total agriculture land, making them near landless workers. Dalits face systemic discrimination in land ownership and are often forced to live on the peripheries of villages. Contract and guardianship laws of the land oust people with disabilities from the right to own property, or other assets. Land reform measures have not been successfully implemented in most states, neither has surplus land been equitably distributed. The Eleventh Five-Year Plan also acknowledged that: “The quantum of land declared surplus is far short of land which was estimated to be surplus on the basis of various national surveys. Thus, it is clear that reform measures have not been able to achieve the desired impact.”<sup>21</sup> The *Draft Approach Paper to the Twelfth Five-Year Plan*, however, does not talk about land reform at all, reflecting a clear lack of priority to the issue.

The forced acquisition of agricultural farmland is further exacerbating landlessness and the country’s agrarian crisis and threatening food security. Despite the existence of the *National Rural Employment Guarantee Act, 2005*, the loss of homes, habitat and lands is forcing thousands of families across rural India to move to urban areas

18 Odisha Development Review, *State of Human Rights Due to Corporate Activities*, Stakeholders’ Report to the United Nations Second Universal Periodic Review of India (2012), November 28, 2011.

19 FIDH, *Arbitrary detention of and judicial harassment against Mr. Narayan Reddy*, January 13, 2012, available at: <http://fidh.org/Arbitrary-detention-of-and,11143>.

20 Planning Commission of India, Government of India, *Eleventh Five-Year Plan (2007-2012)*, 2007.

21 Ibid.

in search of survival options. 'Distress migration' is one of the most striking findings of India's 2011 census, reflected in the increase of the urban population, which is higher than the rural one.<sup>22</sup>

Natural disasters like the 2004 Indian Ocean tsunami, earthquakes, and annual floods have also been responsible for displacing large sections of the population.

Across rural and urban areas, women, children and minorities, especially Scheduled Castes and Scheduled Tribes, suffer disproportionately from the adverse impacts of evictions, homelessness, landlessness, and inadequate housing and living conditions.

In October 2012, as a result of a long and relentless struggle of the landless poor across India, the Ministry of Rural Development agreed to implement a ten-point agenda on land reforms. Among other goals, the agreement speaks about developing a National Land Reforms Policy.<sup>23</sup> The development is a positive one, but much needs to be done to make the agenda a reality and for the benefits of land reform and redistribution to reach the millions of landless poor across India.

## Law and Policy

Despite the dismal status of housing and land rights in the country, there is no comprehensive human rights-based national housing law or policy. The *National Urban Housing and Habitat Policy, 2007*, while stating 'shelter for all' as a goal does not consider housing to be a human right but focuses more on a market approach to housing. The proposed national urban housing scheme *Rajiv Awas Yojana*, which aims to provide security of tenure for residents of slums/informal settlements also needs to focus on incorporating a strong 'human right to adequate housing' approach in order to be successful.

Several bills, which relate to housing and land, are currently in the process of being finalised in India. These include: the *Real Estate (Regulation and Development) Bill 2011*; the *Land Acquisition and Rehabilitation and Resettlement Bill 2011* (recently renamed *The Right to Fair Compensation, Resettlement, Rehabilitation and Transparency in Land Acquisition Bill 2012*); the *Land Titling Bill 2011*; and the *Mines and Minerals (Development and Regulation) Bill 2011*. All these draft bills need to undergo review and extensive consultation while incorporating a human rights approach.

*The Right to Fair Compensation, Resettlement, Rehabilitation and Transparency in Land Acquisition Bill 2012*, is at the centre of a debate, as it is premised on the contentious colonial principle of 'eminent domain', under which the state can acquire private property for public use, following the payment of compensation to the owner. The Bill does not aim at minimising evictions; does not have a rights-based definition of 'public purpose' and does not include adequate human rights safeguards for rehabilitation. It is also weak with regard to urban eviction and displacement issues.

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22 The Hindu, *Census findings point to decade of rural distress*, September 25, 2011, available at: <http://www.thehindu.com/opinion/columns/sainath/article2484996.ece?homepage=true#.ToAHZ9HBvuV.facebook>.

23 For more information on the ten-point agreement, see: <http://ektaparishad.com/Portals/0/Documents/JanSatyagraha-Agreement-on-Land-Reforms.pdf>.



## Questions for the Government of India<sup>24</sup>

1. The Government of India (GoI) in its UPR II report acknowledges the national housing shortage. What concrete time bound measures and performance evaluation has GoI put into place for meeting the national urban housing shortage of 26.53 million and the rural housing shortage of 47.43 million, as reported by the Planning Commission in the Eleventh Five Year Plan (2007-2012)? How is the national urban housing scheme – *Rajiv Awas Yojana* – going to address the urban housing shortage and ensure the construction and provision of low-cost housing for the homeless, national minorities, Scheduled Castes and Scheduled Tribes?
2. The President of India has announced a new scheme called the *National Programme for the Urban Homeless*. What is the budgetary allocation for this programme and how does GoI aim to implement this scheme across India to ensure the realisation of human rights of the country's growing homeless population?
3. How many people have been displaced due to 'development' projects and conflict in India over the last ten years? Of them, how many have been resettled by the state in accordance with human rights standards? To what extent are the *UN Guiding Principles on Internal Displacement*, and the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement* being implemented in India?
4. Given that the number of landless people in India continues to rise, what is India's current policy on land reform and redistribution of land to the landless? How much land has been redistributed to the landless poor in the last four years? What measures has GoI taken to ensure that the draft *Land Acquisition, Rehabilitation and Resettlement Bill 2011 (The Right to Fair Compensation, Resettlement, Rehabilitation and Transparency in Land Acquisition Bill 2012)*, the *Real Estate (Regulation and Development) Bill 2011*, the *Land Titling Bill 2011*, and the *Mines and Minerals (Development and Regulation) Bill 2011*, incorporate international human rights standards and protect human rights, especially of the most vulnerable?
5. What steps has the government taken to ensure better implementation of the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006*, especially in terms of recognition of collective claims/rights?
6. What have been GoI's efforts in implementing the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights (2008) related to housing, forced evictions and homelessness, including with regard to collecting disaggregated data and developing national policies?

## Recommendations for the Government of India

1. Draft a comprehensive human rights-based housing law for both urban and rural areas, which includes measures to check real estate speculation, provide low cost housing and prevent forced evictions. Adopt concrete time-bound indicators to evaluate the state's efforts towards addressing the urban and rural housing shortage.
2. Adopt a concrete and time-bound plan of action under the national housing scheme – *Rajiv Awas Yojana* – in order to ensure low cost housing for economically weaker sections, including the homeless, national minorities, Scheduled Castes and Scheduled Tribes, landless, internally displaced and migrant populations.
3. Develop a concrete plan of action to implement the *National Programme for the Urban Homeless* and ensure that adequate budgetary allocations are made to protect the rights of India's growing homeless population.

24 Questions and Recommendations for the Government of India proposed by HLRN for India's UPR process in May 2012.

4. Implement orders of the Honourable Supreme Court of India on the issue of homelessness.
5. Implement the *UN Guiding Principles on Internal Displacement* and the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement*, and adopt them in national and state laws and policies.
6. Adopt a policy on land and agrarian reform, including for redistribution of land to the landless, and include a strategy to carry out land reforms in the Twelfth Five-Year Plan (2012-2017), which is compliant with international human rights standards.
7. Revise the draft *Land Acquisition and Rehabilitation and Resettlement Bill 2011* (recently renamed *The Right to Fair Compensation, Resettlement, Rehabilitation and Transparency in Land Acquisition Bill 2012*) to: ensure that evictions/relocation take place only in 'exceptional circumstances' and in accordance with international human rights standards; redefine 'public interest' using the human rights approach; include urban evictions and displacement issues; ensure adequate compensation and rehabilitation for all displaced people; and protect the human rights to adequate housing, land, work/livelihood, health, food, water, security as well as the rights to resettlement and return.
8. Ensure implementation of the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*, especially in terms of recognition of collective claims/rights. Also, compile and publicise data on forest dwellers who have been given legal rights under the Act.
9. Take steps to ensure that women are able to claim their rights to inheritance under the *Hindu Succession (Amendment) Act 2005*, and document cases where the Act is being used to the advantage of women.
10. Continue efforts to implement the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights (2008) related to housing, forced evictions and homelessness, including with regard to collecting disaggregated data and developing national policies.
11. Review all draft and pending bills related to housing and land after extensive public consultations. Ensure that the draft *Right to Fair Compensation, Resettlement, Rehabilitation and Transparency in Land Acquisition Bill 2012*, the *Real Estate (Regulation and Development) Bill 2011*, *Land Titling Bill 2011*, and the *Mines and Minerals (Development and Regulation) Bill 2011*, incorporate international human rights standards and protect human rights, especially of the most vulnerable. Revise the *Real Estate (Regulation and Development) Bill 2011* to focus more on curbing real estate speculation and operations of the real estate market.

## India's Second Universal Periodic Review: Recommendations from the UN Human Rights Council Accepted by the Government of India

At the twenty-first session of the UN Human Rights Council in September 2012, the Government of India accepted 67 recommendations<sup>25</sup> from the original list of 169 recommendations proposed by the Council after India's Second Universal Periodic Review in May 2012. The following recommendations have been selected from the list of sixty-seven, as they hold significance for the realisation of the rights to adequate housing and land in India. They have been classified according to the following categories. The country that proposed the recommendation is mentioned in parentheses.

<sup>25</sup> The recommendations are contained in: *Report of the Working Group on the Universal Periodic Review: India*, UN Human Rights Council, UN Doc. No. A/HRC/21/10, Add. 1, 17 September 2012.

## Adequate Living Conditions, Poverty Eradication and Socio-Economic Development

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

### Recommendation Not Adopted by Government of India:

*Continue to implement plans adopted in the area of housing and rehabilitation, particularly the plan launched in 2011 aimed at preventing the construction of new slums (Algeria)*

## Equality and Non-discrimination

- Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's rights. (*Venezuela*)
- Redouble efforts on ensuring gender equality and take measures to prevent gender discrimination. (*Bahrain*)
- Continue following-up on steps taken to eliminate discrimination against women, including through awareness-raising and continuous strengthening of the relevant legal and institutional frameworks. (*Egypt*)
- Re-examine the budgets and social laws taking into account gender issues. (*Morocco*)
- Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Schedules Tribes and Minorities are well achieved. (*Ghana*)
- Ensure better protection for persons with disabilities and the elderly. (*Senegal*)
- Continue working on the welfare of children and women. (*Nepal*)

## Water and Sanitation

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

### Recommendation Not Adopted by Government of India:

*Ensure that every household enjoys the right to safe drinking water and sanitation. (Slovenia)*

## National Coordination

- Further coordination among relevant national authorities and human rights institutions. (*Egypt*)

## International Cooperation

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

## Conclusion

Adequate implementation of the above recommendations could help to promote the human rights to adequate housing and land in India. While none of the recommendations contain the words ‘housing’ and ‘land,’ they do however, relate to the protection and promotion of the human right to an adequate standard of living, which includes the human right to adequate housing.

The recommendations on poverty eradication and socio-economic development are directly related to the need to provide adequate housing and land rights, including the need for adequate budgetary allocations for schemes and policies on housing and land. The recommendations on ensuring equality of men and women also pertain to the issue of land and housing rights, especially the need to provide legal rights to women to land, housing, property, natural resources, inheritance, and to protect them from violence. Recommendations related to protecting the rights of children and on eliminating discrimination against Scheduled Castes, Scheduled Tribes and persons with disabilities, need to be applied to housing and land since these groups face multiple discrimination and confront severe obstacles to the realisation of their rights. Providing clean drinking water and sanitation is integral to the realisation of the human right to an adequate standard of living in both urban and rural areas. This is even more crucial for women, especially for homeless women and women living in slums and informal settlements in cities and towns.

The need for coordination between national human rights institutions and authorities is critical. Since issues of land and housing cover both rural and urban areas as well as several constituencies including women, children, minorities, Scheduled Castes and Scheduled Tribes, coordination is required between various ministries and commissions. The involvement of multiple agencies often results in situations of confusion, abrogation of responsibility and counter-efforts.

The recommendations to cooperate with UN bodies and Special Procedures hold specific importance as India has not implemented the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights (2008) that pertain to homelessness, forced evictions and rehabilitation. India’s periodic report to the Committee is overdue and needs to be submitted at the earliest. The government also needs to implement recommendations on land, tribals and displacement made by the UN Special Rapporteur on Food, on his mission to India (2006).

The above list of recommendations forms a significant basis on which civil society and independent institutions can monitor compliance of the state and carry out advocacy efforts aimed at the realisation of housing, land and related rights across India. HLRN, as a member of WGHR, is also involved in a joint monitoring exercise with the National Human Rights Commission on the UPR. The level of implementation of the UPR recommendations will be reviewed by the Human Rights Council at India’s third UPR in 2016.<sup>26</sup> There could also be a collective effort to call for a mid-term review of the UPR recommendations in 2014.

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<sup>26</sup> For more information, write to: [landhousing@gmail.com](mailto:landhousing@gmail.com).



# HLRN List of Publications

## Fact-finding Reports

*Planned Dispossession: Forced Evictions and the 2010 Commonwealth Games*

(New Delhi: Housing and Land Rights Network (HLRN)-South Asia, 2011);

*Do People's Voices Matter? The Human Right to Participation in Post-tsunami Housing Reconstruction*

(New Delhi: HLRN-South Asia, 2006);

*Battered Islands*

(New Delhi: HLRN-South Asia, 2006);

*Post-tsunami Relief and Rehabilitation: A Violation of Human Rights*

(New Delhi: HLRN-South Asia, 2005);

*The Impact of the 2002 Submergence on Housing and Land Rights in the Narmada Valley*

(New Delhi: HLRN-South Asia, 2003);

*Restructuring New Delhi's Urban Habitat: Building an Apartheid City?*

(New Delhi: HLRN-South Asia, 2002) [in collaboration with Sajha Manch];

*Fact-finding Mission on Resettlement on Land of Bhutanese Refugees*

(New Delhi: HLRN-South Asia, 2002);

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

(New Delhi: HLRN-South Asia and Youth for Unity and Voluntary Action (YUVA), 2002);

*In Quest of Bhabrekar Nagar*

(Mumbai: Habitat International Coalition, 1997).

## Thematic Publications

*Reaffirming Justiciability: Judgements on the Human Right to Adequate Housing from the High Court of Delhi*

(New Delhi, HLRN-South Asia, forthcoming February 2013)

*Human Rights to Adequate Housing and Land in India: Status Update*

(New Delhi, HLRN-South Asia, 2012)

*The Human Right to Adequate Housing and Land*

(New Delhi: National Human Rights Commission, 2006);

*International Human Rights Standards on Post-disaster Resettlement and Rehabilitation* [Working document]

(New Delhi: HLRN-South Asia and People's Movement for Human Rights Learning—PDHRE, 2006);

*Confronting Discrimination: Nomadic Communities in Rajasthan and their Human Rights to Land and Adequate Housing* [Working paper]

(New Delhi: HLRN-South Asia, 2004);

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

(New Delhi: HLRN-South Asia and HAQ: Centre for Child Rights, 2002).

## Country Assessments

### *Dispossessed: Land and Housing Rights in Tibet*

(New Delhi: Tibetan Centre for Human Rights and Democracy in collaboration with HLRN-South Asia, 2002).

## Tools and Techniques Series

### *Handbook on UN Basic Principles and Guidelines on Development-based Evictions and Displacement (English, Hindi, Marathi, Telugu, Tamil, Bengali, Oriya, Urdu and Gujarati)*

(HLRN and YUVA in collaboration with regional partners, 2008, 2009, 2010, 2011, 2012);

### *Housing and Land Rights “Toolkit”* (2005)

*Urgent Action! HLRN Guide to Practical Solidarity for Defending the Human Right to Adequate Housing* (2003);

### *Community Action Planning: Processes – Ideas – Experiences*

(New Delhi: HLRN, YUVA and PDHRE, 2002).

## Reports to UN Bodies

### *Acts of Commission – Acts of Omission: Housing and Land Rights and the Indian State*

[Report to the UN Committee on Economic, Social and Cultural Rights – CESCR]

(New Delhi: HLRN-South Asia with Indian NGOs, 2009, 2004 and 2002);

### *Child in Search of the State* [Report to the Committee on the Rights of the Child]

(New Delhi: HLRN-South Asia, Laya, Human Rights Foundation, and YUVA, 1998).

## Research Reports

### *The 2010 Commonwealth Games: Whose Wealth? Whose Commons?*

(New Delhi: HLRN-South Asia, 2010);

### *Assessing Post-tsunami Housing Reconstruction in Andaman and Nicobar Islands: A People’s Perspective*

[ActionAid International India, HLRN, Society for Andaman and Nicobar Ecology, and TRINet]

(Bengaluru: Books for Change, 2006);

### *Tsunami Response: A Human Rights Assessment*

(Joint publication of HLRN, PDHRE, and ActionAid International, 2006).

## Reports on Women, Housing and Land

### *Our Land, Our Homes, Our Culture, Our Human Rights*

(New Delhi: HLRN-South Asia, 2004);

### *Interlinkages between Violence against Women and Women’s Right to Adequate Housing*

(Chiang Mai: Asia Pacific Forum on Women, Law and Development and HLRN-South Asia, 2004).





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