

Handbook on

**United Nations Basic Principles
and Guidelines on
Development-based
Evictions and Displacement**



HOUSING AND LAND RIGHTS NETWORK

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Introduction

The United Nations (UN) **Basic Principles and Guidelines on Development-based Evictions and Displacement**—presented by the Special Rapporteur on Adequate Housing¹ and acknowledged by the UN Human Rights Council in 2007—is the current international operational tool aimed at minimizing forced evictions, ensuring the human right to adequate housing for all people and communities threatened with evictions, and promoting human rights-based standards related to housing, rehabilitation, and resettlement.

Housing and Land Rights Network (HLRN) has been working on a campaign, since 2007, to promote wider dissemination of the Basic Principles and Guidelines on Development-based Evictions and Displacement (*henceforth UN Guidelines*) among law and policy-makers, peoples' movements, civil society organizations, local communities, including those threatened with evictions, government officials, academics, and relevant institutions, with the objective of encouraging their use, adoption, and implementation by concerned local, state, and central governments as well as relevant non-state actors – national and international.

HLRN's efforts have focused on increasing awareness on the *UN Guidelines* through human rights education; public meetings, seminars, lectures, consultations, and meetings with different levels of government; engagement with the private sector and international institutions; translation into regional languages, writing articles and publishing different handbooks on the *UN Guidelines*;² and, promoting their dissemination.

This Handbook, prepared by HLRN, is being used as an information dissemination and advocacy tool. It introduces readers to the *UN Guidelines*, explains their uses and potential uses as an important mechanism to prevent forced evictions and to ensure due

process and adequate rehabilitation and resettlement, based on human rights standards, in the eventuality that evictions occur. The Handbook first provides a summary of the *UN Guidelines* that includes their principle elements, and then presents the actual text of the *UN Guidelines*.

In addition to spreading awareness on the *UN Guidelines*, this Handbook aims to encourage their use and adoption by various actors, including government officials, law and policy-makers, and different UN bodies, with the goal of contributing to the process of human rights standard-setting – at the local, national, and international levels.

It is hoped that these *UN Guidelines* will be widely disseminated, translated into as many languages as possible, used by relevant authorities, and incorporated into law and policy to ensure that human rights, in particular the human rights to adequate housing, work/livelihood, land, and security of the home and person are respected, protected, and fulfilled.

HLRN seeks support and participation from other like-minded peoples' movements, civil society organizations, and academic institutions to spread awareness on, and advocate towards, the adoption and implementation of the *UN Guidelines*—in local, state, and national laws, policies, and practice—in order to protect the human rights of affected individuals and communities, and to promote international human rights standards in India while ensuring that the government, at all levels, meets its national and international legal commitments.

The Human Right to Adequate Housing

The Right to Adequate Housing is a Human Right

While the majority of the world lives in some form of dwelling, about half the world's population does not enjoy all the entitlements necessary for housing to be considered 'adequate.' It has been well established in international human rights law and its interpretation that housing is not just a physical structure of four walls and a roof. It is a much broader concept, which encompasses various material and non-material elements of 'adequacy,' which are necessary to create a safe and secure place to live. Furthermore, adequate housing is not merely a desired goal; it is a basic human right of all human beings. This has been affirmed by the Universal Declaration of Human Rights in 1948, which recognizes the right to adequate housing as an integral component of the human right to an adequate standard of living.

The Universal Declaration of Human Rights (UDHR) states, under Article 25.1, that:

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

On the basis of the provisions established in UDHR, the right to adequate housing was elaborated and reaffirmed in 1966 by the International Covenant on Economic, Social and Cultural Rights (ICESCR), which in Article 11.1 declares that:

The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The first Special Rapporteur on Adequate Housing defined the human right to adequate housing, as: "The right of every woman,

man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity.”³

The human right to adequate housing is integral to the realisation of the right to live with dignity, and is inextricably linked to other human rights such as the rights to work, health, water, sanitation, food, land, education, and security of the home and person.

Though India has ratified several international human rights instruments, which mandate the guarantee and protection of the human right to adequate housing of all, this basic human right is essentially still not enjoyed by a large number of Indians – in both urban and rural areas.

Protection of the Human Right to Adequate Housing in India

The Constitution of India is firmly grounded in the principles of liberty, fraternity, equality and justice. While the right to housing is not explicitly laid out as a fundamental right, it is encompassed within the fundamental rights and directive principles provided for by the Constitution.

The Fundamental Rights provided for by the Constitution of India include:

- Equality before the law – *Article 14*;
- Non-discrimination on grounds of religion, race, caste, sex, place of birth – *Article 15 (1)*;
- Special provisions in favour of women and children based on the principle of protective discrimination – *Article 15 (3)*;
- Equality of opportunity in matters relating to employment or appointment of any office under the State – *Article 16*;
- Freedom to move freely throughout the territory of India – *Article 19 (1) (d)*;
- Freedom to reside and settle in any part of the territory of India – *Article 19 (1) (e)*;

- Right of all citizens to practice any profession, or to carry on any occupation, trade or business – *Article 19 (1) (g)*; and,
- Right to life and personal liberty – *Article 21*.

All these rights are linked to the protection and guarantee of the human rights to adequate housing and land.

The Supreme Court of India has held that the right to adequate housing is a fundamental human right emanating from the right to life protected by Article 21 of the Constitution (“No person shall be deprived of his life or personal liberty except according to procedure established by law”). There have been several important court judgments that have clearly established the relation between the right to housing and the right to life as guaranteed by Article 21.⁴

In the case of *U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd.* (1996),⁵ the Supreme Court stated:

The right to shelter is a fundamental right, which springs from the right to residence under Article 19 (1)(e) and the right to life under Article 21.

In 1981, the Supreme Court, in the case of *Francis Coralie v. Union Territory of Delhi*,⁶ said:

We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow beings.

In the case of *Chameli Singh and Others v. State of Uttar Pradesh* (1996),⁷ the Supreme Court provided a clear understanding of the right to life:

Right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are the basic human rights known to any civilized

society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Conventions or under the Constitution of India cannot be exercised without these basic human rights.

The judgment also clearly defines the right to shelter and adequate housing. It states:

Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used to as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right... Want of decent residence therefore frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself.

The Supreme Court of India has also upheld the right to livelihood as a component of the right to life and pronounced it as indivisible from the right to housing. This was established in the case of *Olga Tellis v. Bombay Municipal Corporation* (1985):

Eviction of the petitioners from their dwellings would result in the deprivation of their livelihood. Article 21 includes livelihood and so if the deprivation of livelihood were not affected by a reasonable procedure established by law, the same would be violative of Article 21...The right under Article 21 is the right to livelihood, because no person can live without the means of living i.e. the means of livelihood. If the right to livelihood were not to be recognized as part of the Constitutional right to life,

the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation... There is thus a close nexus between life and means of livelihood. And as such that which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life.⁸

In 1996, in the *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and Others* case, the apex court directed the state to construct affordable houses for the poor:

The State has the constitutional duty to provide shelter to make the right to life meaningful.⁹

Significantly, in 1990, the Supreme Court of India also recognized the right of children to adequate housing. In the case *Shantistar Builders v. Narayan Khimalal Totame*, the Court observed:

The Constitution aims at ensuring the full development of every child. That would be possible only if the child is in a proper home.¹⁰

Certain state High Court judgments extensively cite international law and national case law protecting the right to housing.

In the case, *Sudama Singh and Others v. Government of Delhi and Anr.* (2010),¹¹ the High Court of Delhi clearly lays down that rehabilitation and protection of human rights of evicted communities is a duty of the state. In particular the Court asserted:

23. (...) The denial of the benefit of the rehabilitation to the petitioners violates their right to shelter guaranteed under Article 21 of the Constitution. In these circumstances, removal of their *jhuggies* without ensuring their relocation would amount to gross violation of their Fundamental Rights.

The High Court of Delhi, in the case of *P.K. Koul v. Estate Officer* (2010),¹² affirmed:

49. (...) right to residence and to settle in any part of the country is assured to every citizen as a fundamental right under Article

19 (1) (e) of the Constitution of India. (Ref: 1997 (11) SCC 121 Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan & Ors.) The right to shelter springs from this right and has been considered to be an integral part for a meaningful enjoyment of right to life under Article 21 of the Constitution of India. (Ref: 1995 Suppl. 3 SCC 456: AIR 1996 SC 114 U.P. Avas Evam Vikas Parishad & Anr. vs. Friends Co-operative Housing Society Ltd. & Anr.)

52. It has been observed by the Supreme Court in (2003) 6 SCC 1 Kapila Hingorani vs. State of Bihar that indisputably, the state parties to the International Covenant on Economic, Social & Cultural Rights were to take appropriate steps to ensure realisation of this thought. So far as the present case is concerned, this covenant specifically states the right of everyone to an adequate standard of living including housing.

56. It is essential to note that in fact no new right is being created, recognized or reiterated by the international instruments or the said guidelines. The right to shelter of every person has been recognized as an essential concomitant of right to life under Article 21 of the Constitution of India. It would clearly be covered under the definition of a “human right” under Section 2(1)(d) of the Protection of Human Rights Act, 1993, which includes rights relating to life, liberty, equality and dignity. The right to shelter, an essential part of right to life, would therefore also be a statutorily recognized right under Section 2(1)(d) of the Act of 1993 and enforceable as such also.

In the case of *Millennium Educational Trust v. State of Karnataka* (2013),¹³ the Karnataka High Court read the ‘right to shelter’ as an integral aspect of the right to life, guaranteed by Article 21 of the Constitution of India. The Court relied on international covenants to hold that the state has a constitutional obligation to provide housing to marginalized groups. It stated:

Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.

The Court also emphasized that adopting a human rights approach towards housing is necessary for addressing the housing crisis in the country.

In the case of *Dev Nath Yadav v. State of U.P.* (2016),¹⁴ the Allahabad High Court recognized the right to housing as an integral

component of Article 21 of the Constitution of India and held that poor persons residing in towns had a right to resettlement since they did not have proper homes. The Court stated that:

It is also not permissible for the writ petitioners to contend that because the land was reserved for the benefit of the villagers, the poor persons residing in the town cannot be resettled. The right of resettlement of the persons, who do not have proper homes, is a part of the fundamental right to housing, which is now well recognised by the Supreme Court, being a part of life under Article 21 of the Constitution of India.

In the case of *Yamkhomang Haokip v. State of Manipur* (2003),¹⁵ the High Court of Gauhati clarified that Article 21 of the Constitution also includes a right to dwell on pavements and in settlements to earn a livelihood:

It is the Constitution Bench decision in *Olga Tellis v. Union of India*, reported in AIR 1986 SC 180, which has put life and vigour to this requirement, because in that case, the right to dwell on pavement or in slums were accepted as a part of the right conferred by Article 21, which, as would be seen later, takes within its fold the right to livelihood as the persons whom Olga Tellis represented in that case were staying at payments or in slums so as to enable them to earn their livelihood in places nearby, the Court came forward to protect them and desired providing of alternative accommodation for some categories of people.

In the case of *Shivaji Krishna Zunjare v. State of Maharashtra* (2004),¹⁶ the High Court of Bombay while dealing with the exclusion of certain persons from a 'slum rehabilitation' scheme held that housing is an entitlement and a basic human right that encompasses the right to reasonable residential accommodation, and to settle in conditions of decency. As such, the state has a duty to enforce schemes in a planned manner with annual budgets towards providing residence for the poor.

Similarly, in the case of *Joseph Bain D'Souza v. State of Maharashtra* (2005),¹⁷ the High Court of Bombay recognized the right to housing and urged the state government to examine urban planning, evaluate the dilapidated condition of existing housing facilities, and create affordable spaces for the urban poor.

Several national policies also recognize the need of the Indian government to provide improved housing and shelter. The core focus of India's National Urban Housing and Habitat Policy 2007 is the, "provision of 'Affordable Housing for All' with special emphasis on vulnerable sections of society such as Scheduled Castes/Scheduled Tribes, Backward Classes, Minorities and the urban poor."

The Policy recognizes the obligation of the government to provide housing to its citizens:

The new Urban Housing and Habitat Policy lays emphasis on Government retaining its role in social housing so that affordable housing is made available to EWS and LIG of the population as they lack affordability and are hopelessly out priced in urban land markets.¹⁸

This Policy takes note of the substantive gap between demand and supply both for housing and basic services. This Policy seeks to assist the poorest of poor who cannot afford to pay the entire price of a house by providing them access to reasonably good housing on rental and ownership basis with suitable subsidization. The Policy seeks to enhance the supply of houses especially for the disadvantaged, duly supplemented by basic services.¹⁹

Launched in 2015, the Government of India's scheme for housing for the poor—Pradhan Mantri Awas Yojana (PMAY) or Housing for All—2022—proposes to construct 20 million houses in urban areas and 30 million houses in rural areas by the year 2022. The scheme consists of four components: (1) *In situ* (on site) 'slum'

redevelopment using land as a resource (central assistance of Rs 100,000 per unit); (2) Credit-linked interest subsidy (central assistance of Rs 100,000–230,000 per beneficiary); (3) Affordable housing in partnership (central assistance of Rs 150,000 per unit); and, (4) Beneficiary-led individual house construction or enhancement (central assistance of Rs 150,000 per unit).²⁰ The scheme, however, does not include any provisions for the homeless, the most marginalized of society.

The serious issue of urban homelessness is only addressed by the National Urban Livelihoods Mission – Scheme of Shelters for Urban Homeless (NULM-SUH)²¹ that was launched by the Ministry of Housing and Urban Poverty Alleviation (now Ministry of Housing and Urban Affairs – MoHUA) in 2013. The scheme does not discuss housing options for the homeless but confines its ambit to providing shelters and essential services for the urban homeless, in a phased manner. Based on a 2010 order from the Supreme Court of India,²² the scheme stipulates that for every one lakh (100,000) urban population, there should be one permanent community shelter for a minimum of 100 persons. Depending upon local conditions, each shelter could cater to 50–100 persons. NULM-SUH proposes a standard of 50 square feet per person.

The Housing for All–2022 scheme includes a rural component called PMAY-Gramin (rural), under which the central government aims to provide 30 million *pucca* (permanent) houses with basic facilities in rural areas by 2022.²³ The government has declared the construction of 10 million dwelling units in rural areas by 2019, for which Rs 120,000 of financial assistance will be sanctioned for each unit of construction of a permanent house for the rural homeless and those living in dilapidated houses in the plains and Rs 130,000 in hilly areas/difficult terrains.²⁴

Protection of the Human Right to Adequate Housing under International Law, Policy, and Guidelines

The obligation of states to take steps towards the realisation of the human right to adequate housing for all is laid down in a number of international legally binding human rights instruments. These include:

- Convention Related to the Status of Refugees (Article 21);
- International Convention on the Elimination of All Forms of Racial Discrimination (Article 5 (e));
- International Covenant on Economic, Social and Cultural Rights (Article 11.1);
- International Covenant on Civil and Political Rights (Article 17);
- Convention on the Elimination of All Forms of Discrimination against Women (Article 14.2 (h));
- Convention on the Rights of the Child (Articles 16.1 and 27.3);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 43.1); and,
- Convention on the Rights of Persons with Disabilities (Articles 5.3, 9.1 (a), 19 (a), 22.1, 28.1, and 28.2 (d)).

Several UN conventions, declarations, and guidelines also contain provisions that protect the human right to adequate housing. These include:

- International Labour Organization (ILO) Convention No. 110 Concerning Conditions of Employment of Plantation Workers (1958);
- Declaration of the Rights of the Child (1959);
- ILO Recommendation No. 115 on Worker's Housing (1961);
- ILO Convention No. 117 Concerning Basic Aims and Standards of Social Policy (1962);
- Declaration on Social Progress and Development (1969);
- Vancouver Declaration on Human Settlements (1976);

- ILO Convention No. 161 Concerning Occupational Health Services (1985);
- Declaration on the Right to Development (1986);
- ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989);
- Istanbul Declaration on Human Settlements and the Habitat Agenda (1996);
- Declaration on the Rights of Indigenous Peoples (2007);
- Basic Principles and Guidelines on Development-based Evictions and Displacement (2007);
- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012);
- Guiding Principles on Security of Tenure for the Urban Poor (2014);
- The 2030 Agenda for Sustainable Development, which includes several goals and targets related to the right to an adequate standard of living, including housing and land rights; and,
- The New Urban Agenda (2016).

Various regional instruments also provide the legal basis for the progressive realization of the human right to adequate housing.

The scope of the right to adequate housing, guaranteed by Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, was defined by the UN Committee on Economic Social and Cultural Rights (CESCR) in its General Comment 4.²⁵ In order for housing to be adequate, it must, at a minimum, include the following seven core elements:

- Legal security of tenure;
- Availability of services;
- Affordability;
- Accessibility;

- Habitability;
- Location; and,
- Cultural adequacy.

These elements of *adequacy* have further been expanded by Housing and Land Rights Network and the UN Special Rapporteur on Adequate Housing, to include:

- Physical security;
- Participation and information;
- Access to land, water and other natural resources;
- Freedom from dispossession, damage and destruction;
- Resettlement, restitution, compensation,
- Non-refoulement and return;
- Access to remedies;
- Education and empowerment; and,
- Freedom from violence against women.²⁶

Article 51 (c) of the Constitution of India calls for the state to:

Foster respect for international law and treaty obligations in the dealings of organized people with one another.

The Government of India, in its pledge (related to India's membership at the UN Human Rights Council) sent to the President of the UN General Assembly in February 2011,²⁷ also affirmed:

4. (...) the Supreme Court's far-reaching judgment in the *Vishakha v. State of Rajasthan* (1997) case, in which the Court ruled that the provisions of international human rights instruments to which India is a Party may be read into the fundamental rights guaranteed in the Indian Constitution, even in the absence of relevant enabling domestic legislation. The Supreme Court has also recognized the justiciability of some economic and social rights as an extension of the right to life.

In the case, *Kapila Hingorani v. State of Bihar*,²⁸ the Supreme Court of India highlighted the importance of respecting international law while interpreting the Constitution and domestic law:

24. The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and the meaning given to the above words in those Declarations and Covenants have to be such as would help in effective implementation of those rights. The applicability of the Universal Declaration of Human Rights and the principles thereof may have to be read, if need be, into the domestic jurisprudence.

The UN Committee on Economic, Social and Cultural Rights in May 2008, in its Concluding Observations on India, made the following observations and recommendation on housing, evictions, and rehabilitation to the Indian government:

30. The Committee is concerned about the lack of a national housing policy which particularly addresses the needs of the disadvantaged and marginalized individuals and groups, including those living in slums who are reportedly growing in numbers, by providing them with low-cost housing units. The Committee also regrets that sufficient information was not provided by the State party on the extent and causes of homelessness in the State party. The Committee is also concerned that while housing is under the responsibility of the state government, the oversight exercised by the federal government is insufficient to ensure effective implementation of the existing strategies and policies to ensure the right to housing for all.

31. The Committee, while noting that the draft Resettlement and Rehabilitation Bill is currently before Parliament, remains deeply concerned about the reports of displacement and forced evictions in the context of land acquisition by private and state actors for the purposes of development projects, including constructions of dams and mining, and that the members of

disadvantaged and marginalised groups, in particular, the scheduled castes and scheduled tribes, are adversely affected by such displacement from their homes, lands and their sources of livelihood. The Committee is also concerned that urban renewal projects, sporting events, infrastructure expansion, environmental projects and more recently, the designation of large areas as tax-free Special Economic Zones, have resulted in the displacement of millions of families, most of who have not received adequate compensation and rehabilitation. Furthermore, the Committee is concerned about the lack of effective consultations and legal redress for persons affected by displacement and by forced evictions, and the inadequate measures to provide sufficient compensation or alternative housing to those who have been removed from their homes and/or their ancestral lands.

70. The Committee urges the State party to address the acute shortage of affordable housing by adopting a national strategy and a plan of action on adequate housing and by building or providing low-cost rental housing units, especially for the disadvantaged and low income groups, including those living in slums. In this connection, the Committee reminds the State party of its obligations under article 11 of the Covenant and refers to its General Comment No. 4 on the right to adequate housing (1991) to guide the Government's housing policies. The Committee also requests the State party to provide, in its next periodic report, detailed information on homelessness in the State party and the extent of inadequate housing, disaggregated by, *inter alia*, sex, caste, ethnicity and religion.

71. The Committee recommends that the State party take immediate measures to effectively enforce laws and regulations prohibiting displacement and forced evictions, and ensure that persons evicted from their homes and lands be provided with adequate compensation and/or offered alternative accommodation, in accordance with the guidelines adopted

by the Committee in its General Comment No. 7 on forced evictions (1997). The Committee also recommends that, prior to implementing development and urban renewal projects, sporting events and other similar activities, the State party should undertake open, participatory and meaningful consultations with affected residents and communities. In this connection, the Committee draws the attention of the State party to its General Comment No. 4 on the right to adequate housing (1991) and further requests the State party to provide information in its next periodic report on progress achieved in this regard, including disaggregated statistics relating to forced evictions.

The Universal Periodic Review (UPR) – a peer review mechanism established by the UN Human Rights Council assesses the human rights record of all 193 UN member states every 4–5 years. During its third UPR in May 2017, India received several recommendations²⁹ related to sustainable rural and urban development, poverty eradication, farmers’ rights, and the human rights to adequate housing, land, water, sanitation, food, and the environment.³⁰ Three recommendations specifically pertain to the realization of the human right to adequate housing:

161.155: Implement a human-rights based, holistic approach to ensure access to adequate housing as well as to adequate water and sanitation, also for marginalized groups, including Dalits/scheduled castes, homeless, landless, scheduled tribes, religious and ethnic minorities, persons with disabilities, and women.

161.156: Expand the “Housing for all” scheme to realise the right to adequate housing for vulnerable people and eliminate homelessness by 2030.

161.157: Continue the Housing for All policy led by the Government to eradicate by 2030 the problem of homelessness, in conformity with Goal 11 of the 2030 Agenda.

The Government of India accepted all these recommendations and is mandated to implement them and report on the status of progress at its fourth UPR, scheduled for May 2022 at the Human Rights Council in Geneva.

Forced Evictions Violate the Human Right to Adequate Housing

Around the world, the last few years have witnessed an unprecedented rise in forced evictions. A multitude of factors, including large infrastructure and so-called 'development' projects in both rural and urban areas, such as those related to dams, mines, and ports; urban renewal and expansion; city 'beautification'; sports and other mega events; industrial development, including land grabbing and the forced takeover of farmland; real estate speculation; privatisation; and environmental conservation projects, are leading to the forced eviction of individuals and communities from their homes and habitats. In the absence of due processes, including adequate rehabilitation, this has exacerbated homelessness and landlessness and resulted in extensive loss of livelihoods.

Forced evictions also constitute violations of a range of other internationally recognized human rights such as the human right to security of the person and security of the home. In several cases when accompanied with violence and a lack of due process, they violate related human rights to health, food, water, sanitation, work/livelihood, education, freedom from cruel, inhuman and degrading treatment, and freedom of movement and residence.

The United Nations addressed the issue of forced evictions in its Human Rights Commission resolution 1993/77, which affirmed that forced evictions are *prima facie* violations of the human right to adequate housing, and are a contributing factor to the phenomenon of homelessness.

General Comment 7 adopted in 1997 by CESCR, reaffirmed this and defined forced eviction as the, “[p]ermanent or temporary removal against the will of individuals, families or communities from their homes or land, which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”³¹

General Comment 7 also encourages State Parties to ensure that “legislative and other measures are adequate to prevent, and if appropriate punish, forced evictions carried out without appropriate safeguards by private persons or bodies.”

The authorities carrying out forced evictions especially violate people’s entitlements to security of tenure and freedom from forced evictions; access to, and benefit from public goods and services; information, capacity and capacity building; participation and self-expression; rights to resettlement and adequate compensation for violations and losses; and physical security and privacy. All are elements of the human right to adequate housing as recognized in international law.

As a result of forced evictions, people are often left homeless and destitute, without means of earning a livelihood and, in practice, with no effective access to legal or other remedies. Forced evictions are often associated with physical and psychological injuries to those affected, with a particular impact on women, children, persons already living in extreme poverty, indigenous peoples, minorities and other marginalized groups.

Indian case law has also recognized the violation of human rights inherent in the act of forced evictions.

The High Court of Delhi, in the case *Sudama Singh and Others v. Government of Delhi and Anr.* (2010),³² clearly stated:

44. (...) Considerations of fairness require special concern where these settled slum dwellers face threat of being uprooted. Even though their *jhuggi* clusters may be required to be legally removed for public projects, but the consequences can be just

as devastating when they are uprooted from their decades long settled position. What very often is overlooked is that when a family living in a *jhuggi* is forcibly evicted, each member loses a “bundle” of rights – the right to livelihood, to shelter, to health, to education, to access to civic amenities and public transport and above all, the right to live with dignity.

57. This Court would like to emphasise that the context of the MPD [Master Plan of Delhi], *jhuggi* dwellers are not to be treated as “secondary” citizens. They are entitled to no less an access to basic survival needs as any other citizen. It is the State’s constitutional and statutory obligation to ensure that if the *jhuggi* dweller is forcibly evicted and relocated, such *jhuggi* dweller is not worse off. The relocation has to be a meaningful exercise consistent with the rights to life, livelihood and dignity of such *jhuggi* dweller.

In the case, *P.K. Koul v. Estate Officer* (2010),³³ the High Court of Delhi, commented on the rise in forced evictions in Delhi:

194. Experience and examples abound in this city and the aforementioned judicial precedents of forcible evictions relating to slums and *jhuggi* dwellers. Defenceless and disadvantaged citizens are forcibly evicted from their shelters which are then destroyed. And then, the long arm of the state, gives a hyper technical interpretation to legal definitions, takes the shield of statutory provisions and implements what is touted as the “rule of law” in removal of “encroachments” by the disadvantaged. Others illegal constructions and deviants are “regularized” or “compounded” (...)

In the case of *Raja Mohan v. Divisional Engineer, Tamil Nadu Electricity Board* (2016),³⁴ the Madras High Court held that encroachments cannot be evicted unless it affects the public at large or obstructs any genuine public purpose:

In a country like India, poor and landless people, sometimes encroach upon the Government *poramboke* lands. Such encroachment over a period of time has also been recognised

by the Government, so as to enable them to seek for issuance of *patta*, if such lands are not required by the Government. Unless and until public at large is affected, in any manner, causing obstruction to any pathway or rearing cattle and for any other genuine public purpose, **eviction cannot be sought on the sole ground that there are encroachments**. Insofar as removal of encroachment is concerned, it is for the authority to decide as to whether the land allegedly encroached is required or not [emphasis added].

In *Ajay Maken v. Union of India*,³⁵ the High Court of Delhi, in a series of orders restrained evictions without proper rehabilitation and laid emphasis on the human rights concerns arising out of forced evictions. In an order dated 16 December 2015, the Court stated that:

The unilateral action of forced eviction of the jhuggi dwellers of Shakur Basti on 12 December 2015 by the Railways, with the assistance of the Delhi police, resulted in a grave violation of the rights of life and liberty of the jhuggi dwellers, comprising children and adults, including the loss of shelter and personal belongings and being subjected to grave risk to their life and liberty in peak winter.

While there are no laws or policies in India that explicitly prohibit evictions, certain laws provide safeguards against forced evictions by establishing due process requirements to be followed by the government and its authorities. The Slum Areas (Improvement and Clearance) Act 1956 provides that proceedings for eviction of tenants in 'slum' areas should not be undertaken without the permission of the competent authority, which has to determine whether the eviction is in the interest of improvement of the 'slum' area and whether alternative accommodation would be available to the tenants.³⁶ Similarly, The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014 emphasizes that relocation shall only be used as a last resort and lays down a set of guiding principles to be followed by authorities during

relocation.³⁷ In order to prevent arbitrary action by authorities, the Act mandates authorities to conduct extensive surveys and provide adequate notice. The Public Premises (Eviction of Unauthorized Occupants) Act 1971 also lays down the requirement to provide adequate notice and to record the reasons for eviction in writing.³⁸

Additionally, The National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act 2017 extends the provisions of the 2011 law and provides relief to “unauthorized developments” (including several low-income settlements) in the National Capital Territory of Delhi until 31 December 2020, while prohibiting punitive action against them.³⁹ The legislation allows time for the Government of Delhi and other local bodies to formulate balanced policies and strategies for such constructions. The Act, however, does not apply to cases where land is required for “public projects” under central or state laws.

Housing Situation in India

According to the Census of India 2011, about 31 per cent of India’s population (approximately 380 million) lives in urban centres.⁴⁰ This number is expected to reach 600 million by 2030. According to the Technical Group on Urban Housing Shortage, the national urban housing shortage was 18.78 million houses at the end of 2012; out of this 95 per cent of this housing shortage (17.96 million units) was for the economically weaker sections and low income groups.⁴¹ This is projected to increase to 34 million units by 2022. The number of families unable to afford a house is expected to reach 38 million by 2030.⁴² In November 2017, the urban housing shortage was revised to about 10 million units by MoHUA, even though this figure has not yet been corroborated by other experts.⁴³

The lack of affordable housing options forces millions of urban settlers, particularly workers in the informal and unorganized sector, to live in inadequate and precarious conditions on the streets or in underserviced and low quality housing in settlements

that are often referred to in official discourse as ‘slums.’ According to Census 2011, India registered a 37.14 per cent decadal growth in the number of ‘slum’ households. About two-thirds of statutory towns in India have ‘slums’ and a total of 13.75 million families live in them. The actual number, however, according to independent experts and organizations working on issues of urban poverty and housing, is likely to be much higher, if various other forms of inadequate and sub-standard housing are taken into consideration. The Census 2011 data reveals that 36 per cent of households living in such settlements do not have access to basic facilities such as tap water, electricity, and sanitation within their premises. More than 27 per cent of urban residents stay in rental housing, which is mostly informal.

Census 2011 recorded 1.77 million homeless persons in India; about 0.94 million live in urban areas and 0.83 million live in rural areas.⁴⁴ Independent experts estimate the number to be at least three million, with over 200,000 homeless persons living in Mumbai and Navi Mumbai, and 150,000–200,000 in Delhi. Despite the guidelines and standards prescribed in the National Urban Livelihoods Mission – Scheme of Shelters for Urban Homeless (NULM-SUH),⁴⁵ homeless shelters in most cities are inadequate and insufficient. Implementation of the scheme is also weak and varies across states, as noted by a Supreme Court appointed committee in 2017.⁴⁶

About 69 per cent of the Indian population (742.5 million) is rural and lives in 640,867 villages, as per Census 2011. With 10 per cent of the population controlling over 55 per cent of the total land and 60 per cent controlling a mere five per cent of the land, land ownership in India is highly inequitable. The Socio-economic and Caste Census (SECC) 2011 reveals that India has the world’s largest number of landless households: 101 million. About 53.7 million (30 per cent) landless households derive a substantial part of their income from manual work, and for over 91.6 million (51 per cent) of rural households, manual casual work is the sole source

of income. Data from SECC indicates that over 13 per cent of rural households live in one room with *kutchha* (mud/temporary) walls and a *kutchha* roof. Of the total national rural housing shortage, estimated at 40 million households at the end of 2012, 90 per cent was for 'below poverty line' households.⁴⁷

Though several central and state government housing schemes exist for urban and rural areas, including those like PMAY which have notable targets, none of them recognize housing as a human right or integrate a human rights approach in their guidelines or implementation. Instead, they focus more on the commodification of housing and rely on the active involvement of the private sector in housing construction and delivery. Furthermore, the goal of providing 'housing for all' is severely threatened by the high number of forced evictions across the country, which result in the destruction of housing stock that has been built by people, over years, with their own resources and labour.⁴⁸

Forced Evictions and Displacement in India

Forced evictions, displacement of individuals and communities from their homes and lands, and the lack of adequate and inclusive resettlement have further exacerbated the national housing and land crisis in the country. Forced evictions, generally without due process or adherence to human rights standards, continue to be reported from urban and rural areas across India.

It is estimated that since India's independence in 1947, over 70 million people have been displaced for ostensible 'development' or infrastructure projects, including large dams, highway and road construction, ports, thermal power, irrigation, and mining projects, and, the creation of national parks and Special Economic Zones (SEZs).⁴⁹ Of those displaced, 40 per cent are estimated to be indigenous/tribal peoples while 20 per cent are Scheduled Castes/Dalits.⁵⁰ In certain cases, families have been displaced multiple times. In 2012, the National Human Rights Commission reported that, "...usually those displaced are given neither adequate relief

nor the means of rehabilitation”⁵¹ while a parliamentary committee noted that, “Only a third of the displaced persons of planned development have been resettled.”⁵²

Most low-income households do not enjoy security of tenure over their housing and land. Government and private forces, often in collusion, demolish settlements and evict residents under the garb of ‘urban renewal’ and ‘slum-free city’ schemes. The rhetoric of ‘illegality,’ ‘encroachment,’ and increasingly ‘resettlement’ is used to usurp land occupied by Economically Weaker Sections/ Low Income Groups and to use the vacated land for profitable enterprises favouring affluent populations, thereby reducing the space for the urban poor to live and work on.

The majority of evictions in India are not carried out for a genuine ‘public purpose.’ The state and its agencies normally do not conduct social/eviction impact assessments to determine the potential losses of an eviction/relocation.⁵³

Between 2016 and 2017, HLRN estimates that at least 400,000 people in urban and rural areas across India were evicted forcefully from their homes.⁵⁴ These forced evictions and demolitions have resulted in the loss of livelihoods, education, housing, health, security, access to basic services, and income for the affected persons.⁵⁵ No compensation, however, is paid to the evicted families for the losses incurred; neither does the majority receive adequate restitution by the state. An ‘eviction impact assessment’ in Topsia, Kolkata revealed that 383 extremely marginalized evicted families suffered a cumulative loss of assets worth more than Rs 10 million.⁵⁶ In June and July 2016, over 200 families in Delhi lost their homes valued at between Rs 70,000–200,000.⁵⁷ Each family displaced from Ejipura/Koramangala in Bengaluru has suffered a minimum loss of Rs 400,000 resulting from the adverse impacts of forced eviction in 2013.⁵⁸ Several Smart City Proposals under India’s Smart Cities Mission include plans for relocation of the poor from city centres to the margins. Already, forced evictions have been witnessed in some ‘smart cities.’⁵⁹ Inadequate living conditions

in the aftermath of evictions often result in chronic health issues and even death of affected persons,⁶⁰ but the state is never held accountable. Affected persons seldom have access to remedy or grievance redress and, generally, are forced to rebuild their homes and lives on their own. Where resettlement is provided by the state, it is generally in inadequate sites located on city peripheries without access to adequate housing, basic services, livelihoods, education, and infrastructure.⁶¹

The Special Rapporteur on Adequate Housing, in her mission to India report of January 2017, also raised concern over the high incidence of forced evictions in the country. In her recommendations to the Government of India, she explicitly called for a “national moratorium on forced evictions and demolitions of homes.”⁶²

The grim reality of forced evictions in the country, including the associated human rights violations, makes the need for adherence to and implementation of the *UN Guidelines* all the more exigent.

**The United Nations Basic
Principles and Guidelines on
Development-based Evictions
and Displacement**

Background

The Basic Principles and Guidelines on Development-based Evictions and Displacement (*UN Guidelines*) were developed over a series of consultations spanning several years. These principles and operational guidelines offer several prescriptions, based on experiences gathered worldwide since 1997. In June 2007, the Special Rapporteur on Adequate Housing presented, in his annual report, the *UN Guidelines*⁶³ to the UN Human Rights Council, which formally acknowledged them in December 2007.⁶⁴ To date, the *UN Guidelines* have been translated into 25 languages and are the current global operational tool addressing the phenomenon of 'development-based' evictions and displacement.

Highlights of the UN Guidelines

The *UN Guidelines* address the human rights implications of evictions induced by ostensible development projects and related displacement in urban and/or rural areas. They represent a further development of the Comprehensive Human Rights Guidelines on Development-based Displacement (E/CN.4/Sub.2/1997/7, annex). They are based on international human rights law and are consistent with General Comment 4 (1991) and General Comment 7 (1997) of the UN Committee on Economic, Social and Cultural Rights, the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution 60/147, and the Principles on Housing and Property Restitution for Refugees and Displaced Persons (see E/CN.4/Sub.2/2005/17 and Add.1).

In particular, the *UN Guidelines*:

- Define the practice of forced evictions (paragraphs 4-8);
- Lay down stringent criteria under which displacement can occur in “exceptional circumstances,” with “full justification” and procedural guarantees (paragraph 21);
- Enumerate detailed steps to be taken by states to protect human rights prior to, during, and after evictions (paragraphs 37-58);
- Call for comprehensive “eviction-impact assessments” to be carried out prior to displacement (paragraphs 32, 33, 42);
- Call for provision of compensation, restitution, and adequate rehabilitation consistent with human rights standards (paragraphs 42, 60-63, 69, 70);
- Provide useful guidance on other phenomena that lead to displacement such as ethnic and armed conflict, and natural and human-induced disasters, including climate change-induced displacement (paragraphs 52, 55);
- Establish a ‘right to resettle’ consistent with the human right to adequate housing for displaced communities living in adverse conditions (paragraphs 16, 52-56);
- Establish a ‘right to return’ (paragraphs 64-67);
- Call on states, in pursuance of an “immediate obligation” to guarantee security of tenure to all those currently lacking titles to home and land (paragraphs 23, 25);
- Provide a strong gender perspective, including protection and entitlements to women (paragraphs 7, 15, 26, 29, 33, 34, 38, 39, 47, 50, 53, 54, 57, 58);
- Protect children’s right to adequate housing (paragraphs 21, 31, 33, 47, 50, 52, 54, 56);
- Emphasize the differential nature of impacts of evictions on marginalized groups and communities, including indigenous peoples, minorities, historically discriminated groups, persons

with disabilities, and older persons, and call for the protection of their human rights (paragraphs 21, 29, 31, 33, 29, 38, 39, 54, 57);

- Protect the rights of human rights defenders (paragraph 22);
- Call for protection of related human rights:
 - Human right to work/livelihood (paragraphs 43, 52, 63);
 - Human right to land (paragraphs 16, 22, 25, 26, 30, 31, 43, 56, 60, 61, 63, 71);
 - Human right to food (paragraphs 52, 57);
 - Human right to health (paragraphs 16, 54-57, 63, 68);
 - Human right to education (paragraphs 16, 52, 57, 60, 63);
 - Human right to water (paragraphs 44, 52, 55, 57);
 - Human right to sanitation (paragraphs 44, 52, 55);
- Stress the obligations of non-state actors (paragraphs 11, 71-73); and,
- Call for states to take intervening measures to ensure that market forces do not increase the vulnerability of low-income and marginalized groups to forced eviction (paragraphs 8, 30).

Current and Potential Uses of the UN Guidelines

The *UN Guidelines* aim to minimize displacement and call for sustainable alternatives, wherever possible. In the event that displacement is inevitable, the *UN Guidelines* lay down certain non-negotiable human rights standards that must be respected and upheld in all circumstances.

The *UN Guidelines* could serve a range of purposes:

- *Improve policies and practices of all actors responsible for evictions, displacement, and rehabilitation:* This includes local and national government officials, municipal authorities, corporate sector representatives, and law enforcement agencies, including police officials. The *UN Guidelines* could be used to ensure that their operations do not violate any human rights but instead adhere to human rights standards.

- *Contribute towards protecting human rights and help meet states' national and international legal commitments:* Implementing the *UN Guidelines* could help improve the local/national human rights situation, as forced evictions violate a range of legally recognized human rights. This could also assist states in meeting their legal obligations, including to UN treaty bodies and UNHRC under the UPR.
- *Generate awareness among the displaced and those facing threats of eviction as well as social movements, civil society organizations, human rights defenders, and lawyers working on their behalf:* When affected people are aware of their human rights and of the responsibilities of governing agencies, they are better equipped to demand their human rights and ensure their implementation.
- *Monitor governance as well as practices of all involved parties* (including the corporate sector, public sector, and the government) with the aim of ensuring compliance with local, national, and international laws.
- *Influence law and policy reform:* The *UN Guidelines* could be incorporated into national laws, policies, administrative decisions, and court judgments,⁶⁶ related to housing, development, displacement, and rehabilitation, to ensure the operationalisation of just practices that uphold the human rights of affected people.
- *Strengthen and contribute to the work of the UN human rights system,* including through standard-setting (for example on land and human rights);
- *Provide guidance to planners* in order to ensure that both urban and rural planning is equitable, participatory, balanced, and based on human rights standards, and also incorporates the needs of marginalized sections of society.
- *Promote the development of tools* (as called upon by the *UN Guidelines*) to conduct 'eviction impact assessments,'

with the aim of both preventing evictions and providing just compensation, rehabilitation, and restitution after an eviction.⁶⁷

- *Assist law enforcement agencies* (including the judiciary and human rights institutions at the national, state, and local level) in interpreting and implementing national and international law with a view to minimizing displacement and enforcing adequate and just rehabilitation.
- *Promote accountability* of both government and non-government agencies.
- *Promote human rights education*, including through publication, dissemination, and translation into local languages.
- *Mobilize national and international campaigns* against forced evictions and to advocate for the recognition, realisation, and protection of the human rights to adequate housing and land.

The *UN Guidelines* are being used increasingly around the world, by civil society organizations and social movements, and at different levels of government and of law and decision-making.⁶⁶ Two judgments of the High Court of Delhi in the cases of *Sudama Singh and Others v. Government of Delhi and Anr.*⁷¹ and *P.K. Koul v. Estate Officer*⁶⁸ cite the *UN Guidelines* and call for the adoption of the human-rights based standards for rehabilitation that they propose. The Kenyan High Court has also passed two judgments that rely on the *UN Guidelines* for their conclusions.⁶⁹

In a path-breaking development, the Mexican Supreme Court, in 2014, issued a 'protocol' that uses the *UN Guidelines* as a basis for its arguments⁷⁰ and is intended to serve as a reference for judges as they adjudicate cases where large infrastructure, mining, and development projects may cause human rights violations.

The *UN Guidelines* have influenced further standard-setting by different bodies and mechanisms in the UN, including the work of Special Procedures. They have been cited in the document on 'Large-scale Land Acquisitions and Leases: A Set of Core Principles and Measures to Address the Human Rights Challenge' developed by the Special Rapporteur on the Right to Food⁷² and in the 'Guiding Principles on Security of Tenure for the Urban Poor' of the Special Rapporteur on Adequate Housing.⁷³

Regional human rights bodies have also relied extensively on the *UN Guidelines* for the formulation of their standards on displacement.⁷⁴ Several UN agencies⁷⁵ and international financial institutions⁷⁶ have incorporated provisions of the *UN Guidelines*, especially with regard to their standards and policies related to displacement and resettlement. The *UN Guidelines* have also been referenced in a number of resource books that compile cases and materials on human rights, and are frequently used across the world as course material for university courses on human rights.⁷⁷

The *UN Guidelines* have been translated into 25 languages, including the official languages of the UN (English, Spanish, French, Arabic, Russian, and Chinese), Hindi, Bengali, Oriya, Marathi, Gujarati, Tamil, Telugu, Kannada, Urdu, as well as Khmer, Tajik, Serbian, Portuguese, Japanese, Kazakh, Tetum, Turkish, Burmese, and Thai.⁷⁸ Local translations help grassroots groups and affected communities to understand the *UN Guidelines* better, and to use them to advocate for and promote their human rights, including their rights to adequate housing, resettlement, and rehabilitation as well as procedural rights to information, participation, and consultation.

SUMMARY

Basic Principles and Guidelines on Development- based Evictions and Displacement

This section provides a summary of the *UN Guidelines* by highlighting the key elements and principles of each section, and is intended to give readers an overview of the components of the Guidelines. It is followed by the actual text of the *UN Guidelines*.

I. Scope and Nature (paragraphs 1 – 10)

The obligation of States to refrain from, and protect against, forced evictions from home(s) and land arises from several international legal instruments that protect the human right to adequate housing and other related human rights. In addition, and consistent with the indivisibility of a human rights approach, “(n)o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence,” and “(e)veryone has the right to the protection of the law against such interference or attacks.”

The present guidelines address the human rights implications of development-linked evictions and related displacement in urban and/or rural areas. Having due regard for all relevant definitions of the practice of “forced evictions” in the context of international human rights standards, the present guidelines apply to acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection. Forced evictions constitute a distinct phenomenon under international law, and are often linked to the absence of legally secure tenure, which constitutes an essential element of the human right to adequate housing.

Forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom

from cruel, in human and degrading treatment, and freedom of movement. Evictions must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law.

II. General Obligations (paragraphs 11 – 36)

A. Duty-bearers and nature of obligations (paragraphs 11 – 12)

While a variety of distinct actors may carry out, sanction, demand, propose, initiate, condone or acquiesce to forced evictions, States bear the principal obligation for applying human rights and humanitarian norms, in order to ensure respect for the rights enshrined in binding treaties and general principles of international public law, as reflected in the present guidelines. This does not, however, absolve other parties, including project managers and personnel, international financial and other institutions or organizations, transnational and other corporations, and individual parties, including private landlords and landowners, of all responsibility.

B. Basic human rights principles (paragraphs 13 – 20)

According to international law, States must ensure that protection against forced evictions, and of the human right to adequate housing and secure tenure, are guaranteed without discrimination of any kind on the basis of race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or other status. States must ensure the equal right of women and men to protection from forced evictions and the equal enjoyment of the human right to adequate housing and security of tenure, as reflected in the present guidelines.

C. Implementation of State obligations (paragraphs 21 – 27)

States shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their adverse impact on a wide range of internationally recognized human rights. Any eviction must be: (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law.

D. Preventive strategies, policies and programmes (paragraphs 28 – 36)

States should adopt, to the maximum of their available resources, appropriate strategies, policies and programmes to ensure effective protection of individuals, groups and communities against forced eviction and its consequences. States should carry out comprehensive reviews of relevant strategies, policies and programmes, with a view to ensuring their compatibility with international human rights norms. States should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate.

States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. “Eviction impact” assessments

should also include exploration of alternatives and strategies for minimizing harm. Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly, and marginalized sectors of society.

III. Prior to Evictions (paragraphs 37 – 44)

Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements:

- (a) Appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives;
- (b) Effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups;
- (c) A reasonable time period for public review of, comment on, and/or objection to the proposed plan;
- (d) Opportunities and efforts to facilitate the provision of legal, technical, and other advice to affected persons about their rights and options; and,
- (e) Holding of public hearing(s) that provide affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.

States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples, and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider.

Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance.

Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. All resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads, and allocation of land and sites must be consistent with the present guidelines and internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling.

IV. During Evictions (paragraphs 45 – 51)

The procedural requirements for ensuring respect for human rights standards include the mandatory presence of government officials or their representatives on site during evictions.

Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected.

Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections or during or just prior to school examinations. States and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence.

V. After an Eviction: Immediate Relief and Relocation (paragraphs 52 – 58)

The government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction,

except in cases of *force majeure*. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable drinking water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.

Special attention should be paid to: (a) the health needs of women and children, including access to female health-care providers where necessary, and to services such as reproductive health care and appropriate counselling for victims of sexual and other abuses; (b) ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation; and, (c) the prevention of contagious and infectious diseases, including HIV/AIDS, at relocation sites.

Identified relocation sites must fulfil the criteria for adequate housing according to international human rights law. These include: (a) security of tenure; (b) services, materials, facilities, and infrastructure such as potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage, and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors, and ensuring physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas and (g) culturally appropriate housing. In order to ensure security

of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence, and access to remedies for any violations suffered.

VI. Remedies for Forced Evictions (paragraphs 59 – 68)

All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

A. Compensation (paragraphs 60 – 63)

Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better. Women and men must be co-beneficiaries of all compensation packages.

B. Restitution and return (paragraphs 64 – 67)

When return is possible or adequate resettlement in conformity with these guidelines is not provided, the competent authorities should establish conditions and provide the means, including financial, for voluntary return in safety and security, and with dignity to homes or places of habitual residence.

When return to one's place of residence and recovery of property and possessions is not possible, competent authorities must provide victims of forced evictions, or assist them in obtaining, appropriate compensation or other forms of just reparation.

C. Resettlement and rehabilitation (paragraph 68)

While all parties must give priority to the right of return, certain circumstances (including for the promotion of general welfare, or where the safety, health or enjoyment of human rights so demands) may necessitate the resettlement of particular persons, groups and communities due to development-based forced evictions. Such resettlement must occur in a just and equitable manner and in full accordance with international human rights law.

VII. Monitoring, Evaluation, and Follow-Up (paragraphs 69 – 70)

States should actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long-term consequences of evictions, including forced evictions that occur within their jurisdiction and territory of effective control. Monitoring reports and findings should be made available to the public and concerned international parties in order to promote the development of best practices and problem-solving experiences based on lessons learned.

VIII. Role of the International Community, including International Organizations (paragraphs 71 – 74)

The international community bears an obligation to promote, protect, and fulfil the human right to adequate housing, land, and property. International financial, trade, development, and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should

take fully into account the prohibition on forced evictions under international human rights law and related standards. Transnational corporations and other business enterprises must respect the human right to adequate housing, including the prohibition on forced evictions, within their respective spheres of activity and influence.

FULL TEXT

**Basic Principles and
Guidelines on Development-
based Evictions and
Displacement**

Basic Principles and Guidelines on Development-based Evictions and Displacement*

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* This is the actual and complete text of the Guidelines. Presented in the report of the UN Special Rapporteur on Adequate Housing, A/HRC/4/18, February 2007. Available at: http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

I. Scope and Nature

1. The obligation of States to refrain from, and protect against, forced evictions from home(s) and land arises from several international legal instruments that protect the human right to adequate housing and other related human rights. These include the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (art. 11, para. 1), the Convention on the Rights of the Child (art. 27, para. 3), the non-discrimination provisions found in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination.
2. In addition, and consistent with the indivisibility of a human rights approach, article 17 of the International Covenant on Civil and Political Rights states that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”, and further that “[e]veryone has the right to the protection of the law against such interference or attacks”. Article 16, paragraph 1, of the Convention on the Rights of the Child contains a similar provision. Other references in international law include article 21 of the 1951 Convention relating to the Status of Refugees; article 16 of International Labour Organization (ILO) Convention No. 169 concerning indigenous and tribal peoples in independent countries (1989); and article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention).
3. The present guidelines address the human rights implications of development-linked evictions and related displacement in urban and/or rural areas. These guidelines represent a further development of the Comprehensive

human rights guidelines on development-based displacement (E/CN.4/Sub.2/1997/7, annex). They are based on international human rights law, and are consistent with general comment No. 4 (1991) and general comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights, the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution 60/147, and the Principles on housing and property restitution for refugees and displaced persons (see E/CN.4/Sub.2/2005/17 and Add.1).

4. Having due regard for all relevant definitions of the practice of “forced evictions” in the context of international human rights standards, the present guidelines apply to acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.^a
5. Forced evictions constitute a distinct phenomenon under international law, and are often linked to the absence of legally secure tenure, which constitutes an essential element of the right to adequate housing. Forced evictions share many consequences similar to those resulting from arbitrary displacement,^b including population transfer, mass

a The prohibition of forced evictions does not apply to evictions carried out both in accordance with the law and in conformity with the provisions of international human rights treaties.

b Consistent with Principle 6 of the Guiding Principles on Internal Displacement.

expulsions, mass exodus, ethnic cleansing and other practices involving the coerced and involuntary displacement of people from their homes, lands and communities.

6. Forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement. Evictions must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law.
7. Forced evictions intensify inequality, social conflict, segregation and “ghettoization”, and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities, and indigenous peoples.
8. In the context of the present guidelines, development-based evictions include evictions often planned or conducted under the pretext of serving the “public good”, such as those linked to development and infrastructure projects (including large dams, large-scale industrial or energy projects, or mining and other extractive industries); land-acquisition measures associated with urban renewal, slum upgrades, housing renovation, city beautification, or other land-use programmes (including for agricultural purposes); property, real estate and land disputes; unbridled land speculation; major international business or sporting events; and, ostensibly environmental purposes. Such activities also include those supported by international development assistance.

9. Displacement resulting from environmental destruction or degradation, evictions or evacuations resulting from public disturbances, natural or human-induced disasters, tension or unrest, internal, international or mixed conflict (having domestic and international dimensions) and public emergencies, domestic violence, and certain cultural and traditional practices often take place without regard for existing human rights and humanitarian standards, including the right to adequate housing. Such situations may, however, involve an additional set of considerations that the present guidelines do not explicitly address, though they can also provide useful guidance in those contexts. Attention is drawn to the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and serious violations of international humanitarian law, the Guiding Principles on Internal Displacement, and the Principles on housing and property restitution for refugees and displaced persons.
10. While recognizing the wide range of contexts in which forced evictions take place, the present guidelines focus on providing guidance to States on measures and procedures to be adopted in order to ensure that development-based evictions are not undertaken in contravention of existing international human rights standards and do not thus constitute “forced evictions”. These guidelines aim at providing a practical tool to assist States and agencies in developing policies, legislation, procedures and preventive measures to ensure that forced evictions do not take place, and to provide effective remedies to those whose human rights have been violated, should prevention fail.

II. General Obligations

A. Duty bearers and nature of obligations

11. While a variety of distinct actors may carry out, sanction, demand, propose, initiate, condone or acquiesce to forced evictions, States bear the principal obligation for applying human rights and humanitarian norms, in order to ensure respect for the rights enshrined in binding treaties and general principles of international public law, as reflected in the present guidelines. This does not, however, absolve other parties, including project managers and personnel, international financial and other institutions or organizations, transnational and other corporations, and individual parties, including private landlords and landowners, of all responsibility.
12. Under international law, the obligations of States include the respect, protection and fulfilment of all human rights and fundamental freedoms. This means that States shall: refrain from violating human rights domestically and extraterritorially; ensure that other parties within the State's jurisdiction and effective control do not violate the human rights of others; and take preventive and remedial steps to uphold human rights and provide assistance to those whose rights have been violated. These obligations are continuous and simultaneous, and are not suggestive of a hierarchy of measures.

B. Basic human rights principles

13. According to international human rights law, everyone has the right to adequate housing as a component of the right to an adequate standard of living. The right to adequate housing includes, inter alia, the right to protection against arbitrary or unlawful interference with privacy, family, home, and to legal security of tenure.

14. According to international law, States must ensure that protection against forced evictions, and the human right to adequate housing and secure tenure, are guaranteed without discrimination of any kind on the basis of race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or other status.
15. States must ensure the equal right of women and men to protection from forced evictions and the equal enjoyment of the human right to adequate housing and security of tenure, as reflected in the present guidelines.
16. All persons, groups, and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.^c
17. States must ensure that adequate and effective legal or other appropriate remedies are available to any person claiming that his/her right to protection against forced evictions has been violated or is under threat of violation.
18. States must refrain from introducing any deliberately retrogressive measures with respect to de jure or de facto protection against forced evictions.
19. States must recognize that the prohibition of forced evictions includes arbitrary displacement that results in altering the ethnic, religious, or racial composition of the affected population.

^c See general comment No. 4 on the right to adequate housing, adopted by the Committee on Economic, Social and Cultural Rights in 1991.

20. States must formulate and conduct their international policies and activities in compliance with their human rights obligations, including through both the pursuit and provision of international development assistance.

C. Implementation of State obligations

21. States shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their adverse impact on a wide range of internationally recognized human rights. Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare;^d (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law.
22. States must adopt legislative and policy measures prohibiting the execution of evictions that are not in conformity with their international human rights obligations. States should refrain, to the maximum extent possible, from claiming or confiscating housing or land, and in particular when such action does not contribute to the enjoyment of human rights. For instance, an eviction may be considered justified if measures of land reform or redistribution, especially for the benefit of vulnerable or deprived persons, groups or communities are involved. States should apply appropriate civil or criminal penalties against any public or private person or entity within its jurisdiction that carries out evictions in a manner not fully consistent with applicable law and

^d In the present guidelines, the promotion of the general welfare refers to steps taken by States consistent with their international human rights obligations, in particular the need to ensure the human rights of the most vulnerable.

international human rights standards. States must ensure that adequate and effective legal or other appropriate remedies are available to all those who undergo, remain vulnerable to, or defend against forced evictions.

23. States shall take steps, to the maximum of their available resources, to ensure the equal enjoyment of the right to adequate housing by all. The obligation of States to adopt appropriate legislative and policy measures to ensure the protection of individuals, groups and communities from evictions that are not in conformity with existing international human rights standards is immediate.^e
24. In order to ensure that no form of discrimination, statutory or otherwise, adversely affects the enjoyment of the human right to adequate housing, States should carry out comprehensive reviews of relevant national legislation and policy with a view to ensuring their conformity with international human rights provisions. Such comprehensive review should also ensure that existing legislation, regulation and policy address the privatization of public services, inheritance and cultural practices, so as not to lead to, or facilitate forced evictions.^f
25. In order to secure a maximum degree of effective legal protection against the practice of forced evictions for all persons under their jurisdiction, States should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land.

e See general comment No. 3 on the nature of States parties' obligations, adopted in 1990 by the Committee on Economic, Social and Cultural Rights.

f See the guidelines on housing and discrimination contained in the 2002 report of the Commission on Human Rights Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2002/59).

26. States must ensure the equal enjoyment of the right to adequate housing by women and men. This requires States to adopt and implement special measures to protect women from forced evictions. Such measures should ensure that titles to housing and land are conferred on all women.
27. States should ensure that binding human rights standards are integrated in their international relations, including through trade and investment, development assistance and participation in multilateral forums and organizations. States should implement their human rights obligations with regard to international cooperation,^g whether as donors or as beneficiaries. States should ensure that international organizations in which they are represented refrain from sponsoring or implementing any project, programme or policy that may involve forced evictions, that is, evictions not in full conformity with international law, and as specified in the present guidelines.

D. Preventive strategies, policies and programmes

28. States should adopt, to the maximum of their available resources, appropriate strategies, policies, and programmes to ensure effective protection of individuals, groups, and communities against forced eviction and its consequences.
29. States should carry out comprehensive reviews of relevant strategies, policies and programmes, with a view to ensuring their compatibility with international human rights norms. In this regard, such reviews must strive to remove provisions that contribute to sustaining or exacerbating existing inequalities that adversely affect women and marginalized and vulnerable groups. Governments must take special measures to ensure that policies and programmes are not

^g As set forth in article 22, Universal Declaration of Human Rights; Articles 55 and 56 of the Charter of the United Nations; articles 2, paragraph 1, 11, 15, 22 and 23, International Covenant on Economic, Social and Cultural Rights; articles 23, paragraph 4, and 28, paragraph 3, Convention on the Rights of the Child.

formulated or implemented in a discriminatory manner, and do not further marginalize those living in poverty, whether in urban or rural areas.

30. States should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate. States should review the operation and regulation of the housing and tenancy markets and, when necessary, intervene to ensure that market forces do not increase the vulnerability of low-income and other marginalized groups to forced eviction. In the event of an increase in housing or land prices, States should also ensure sufficient protection against physical or economic pressures on residents to leave or be deprived of adequate housing or land.
31. Priority in housing and land allocation should be ensured to disadvantaged groups such as the elderly, children and persons with disabilities.
32. States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. “Eviction-impact” assessment should also include exploration of alternatives and strategies for minimizing harm.
33. Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly, and marginalized sectors of society. All such assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed.

34. Adequate training in applying international human rights norms should be required and provided for relevant professionals, including lawyers, law enforcement officials, urban and regional planners and other personnel involved in the design, management and implementation of development projects. This must include training on women's rights, with an emphasis on women's particular concerns and requirements pertaining to housing and land.
35. States should ensure the dissemination of adequate information on human rights and laws and policies relating to protection against forced evictions. Specific attention should be given to the dissemination of timely and appropriate information to groups particularly vulnerable to evictions, through culturally appropriate channels and methods.
36. States must ensure that individuals, groups and communities are protected from eviction during the period that their particular case is being examined before a national, regional or international legal body.

III. Prior to Evictions

37. Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and

other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.

38. States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.
39. During planning processes, opportunities for dialogue and consultation must be extended effectively to the full spectrum of affected persons, including women and vulnerable and marginalized groups, and, when necessary, through the adoption of special measures or procedures.
40. Prior to any decision to initiate an eviction, authorities must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare.
41. Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist,

all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary.

42. Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated.
43. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. The State must make provision for the adoption of all appropriate measures, to the maximum of its available resources, especially for those who are unable to provide for themselves, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted.
44. All resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads, and allocation of land and sites, must be consistent with the present guidelines and internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling.^h

IV. During Evictions

45. The procedural requirements for ensuring respect for human rights standards include the mandatory presence of

^h See section V of the present guidelines.

governmental officials or their representatives on site during evictions. The governmental officials, their representatives and persons implementing the eviction must identify themselves to the persons being evicted and present formal authorization for the eviction action.

46. Neutral observers, including regional and international observers, should be allowed access upon request, to ensure transparency and compliance with international human rights principles during the carrying out of any eviction.
47. Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected.
48. Any legal use of force must respect the principles of necessity and proportionality, as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and any national or local code of conduct consistent with international law enforcement and human rights standards.
49. Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations.
50. States and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

51. Authorities and their agents should never require or force those evicted to demolish their own dwellings or other structures. The option to do so must be provided to affected persons, however, as this would facilitate salvaging of possessions and building material.

V. After an Eviction: Immediate Relief and Relocation

52. The Government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in cases of force majeure. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.
53. Special efforts should be made to ensure equal participation of women in all planning processes and in the distribution of basic services and supplies.
54. In order to ensure the protection of the human right to the highest attainable standard of physical and mental health, all evicted persons who are wounded and sick, as well as those with disabilities, should receive the medical care and attention they require to the fullest extent practicable and

with the least possible delay, without distinction on any non-medically relevant grounds. When necessary, evicted persons should have access to psychological and social services. Special attention should be paid to: (a) the health needs of women and children, including access to female health-care providers where necessary, and to services such as reproductive health care and appropriate counselling for victims of sexual and other abuses; (b) ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation; and (c) the prevention of contagious and infectious diseases, including HIV/AIDS, at relocation sites.

55. Identified relocation sites must fulfil the criteria for adequate housing according to international human rights law. These include:ⁱ (a) security of tenure; (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas; and (g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered.

ⁱ See general comment No. 4 on adequate housing adopted by the Committee on Economic, Social and Cultural Rights in 1991.

56. In determining the compatibility of resettlement with the present guidelines, States should ensure that in the context of any case of resettlement the following criteria are adhered to:
- (a) No resettlement shall take place until such time as a comprehensive resettlement policy consistent with the present guidelines and internationally recognized human rights principles is in place;
 - (b) Resettlement must ensure that the human rights of women, children, indigenous peoples and other vulnerable groups are equally protected, including their right to property ownership and access to resources;
 - (c) The actor proposing and/or carrying out the resettlement shall be required by law to pay for any associated costs, including all resettlement costs;
 - (d) No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction;
 - (e) The right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed. The State shall provide all necessary amenities, services and economic opportunities at the proposed site;
 - (f) The time and financial cost required for travel to and from the place of work or to access essential services should not place excessive demands upon the budgets of low-income households;
 - (g) Relocation sites must not be situated on polluted land or in immediate proximity to pollution sources that

- threaten the right to the highest attainable standards of mental and physical health of the inhabitants;
- (h) Sufficient information shall be provided to the affected persons, groups and communities on all State projects and planning and implementation processes relating to the concerned resettlement, including information on the purported use of the eviction dwelling or site and its proposed beneficiaries. Particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women and children are represented and included in this process;
 - (i) The entire resettlement process should be carried out with full participation by and with affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities;
 - (j) If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least 90 days' notice prior to the date of the resettlement; and
 - (k) Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.
57. Rehabilitation policies must include programmes designed for women and marginalized and vulnerable groups to ensure their equal enjoyment of the human rights to housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman or degrading treatment, and freedom of movement.
58. Persons, groups or communities affected by an eviction should not suffer detriment to their human rights, including

their right to the progressive realization of the right to adequate housing. This applies equally to host communities at relocation sites.

VI. Remedies for Forced Evictions

59. All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

A. Compensation

60. When eviction is unavoidable, and necessary for the promotion of the general welfare, the State must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.

61. All those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for the loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process. Consideration of the circumstances of each case shall allow for the provision of compensation for losses related to informal property, such as slum dwellings.
62. Women and men must be co-beneficiaries of all compensation packages. Single women and widows should be entitled to their own compensation.
63. To the extent not covered by assistance for relocation, the assessment of economic damage should take into consideration losses and costs, for example, of land plots and house structures; contents; infrastructure; mortgage or other debt penalties; interim housing; bureaucratic and legal fees; alternative housing; lost wages and incomes; lost educational opportunities; health and medical care; resettlement and transportation costs (especially in the case of relocation far from the source of livelihood). Where the home and land also provide a source of livelihood for the evicted inhabitants, impact and loss assessment must account for the value of business losses, equipment/inventory, livestock, land, trees/crops, and lost/decreased wages/income.

B. Restitution and return

64. The circumstances of forced evictions linked to development and infrastructure projects (including those mentioned in paragraph 8 above) seldom allow for restitution and return. Nevertheless, when circumstances allow, States should prioritize these rights of all persons, groups and communities subjected to forced evictions. Persons, groups and communities shall not, however, be forced against their will to return to their homes, lands or places of origin.

65. When return is possible or adequate resettlement in conformity with these guidelines is not provided, the competent authorities should establish conditions and provide the means, including financial, for voluntary return in safety and security, and with dignity, to homes or places of habitual residence. Responsible authorities should facilitate the reintegration of returned persons and exert efforts to ensure the full participation of affected persons, groups and communities in the planning and management of return processes. Special measures may be required to ensure women's equal and effective participation in return or restitution processes in order to overcome existing household, community, institutional, administrative, legal or other gender biases that contribute to marginalization or exclusion of women.
66. Competent authorities have the duty and responsibility to assist returning persons, groups or communities to recover, to the maximum extent possible, the property and possessions that they left behind or were dispossessed of upon their eviction.
67. When return to one's place of residence and recovery of property and possessions is not possible, competent authorities must provide victims of forced evictions, or assist them in obtaining, appropriate compensation or other forms of just reparation.

C. Resettlement and rehabilitation

68. While all parties must give priority to the right of return, certain circumstances (including for the promotion of general welfare, or where the safety, health or enjoyment of human rights so demands) may necessitate the resettlement of particular persons, groups and communities due to development-based evictions. Such resettlement must occur in a just and equitable manner and in full accordance

with international human rights law as elaborated in section V of these guidelines.

VII. Monitoring, Evaluation and Follow-up

69. States should actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long-term consequences of evictions, including forced evictions that occur within their jurisdiction and territory of effective control. Monitoring reports and findings should be made available to the public and concerned international parties in order to promote the development of best practices and problem-solving experiences based on lessons learned.
70. States should entrust an independent national body, such as a national human rights institution, to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law.

VIII. Role of the International Community, including International Organizations

71. The international community bears an obligation to promote, protect and fulfil the human right to housing, land and property. International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition on forced evictions under international human rights law and related standards.
72. International organizations should establish or accede to complaint mechanisms for cases of forced evictions that result from their own practices and policies. Legal remedies should be provided to victims in accordance with those stipulated in these guidelines.

73. Transnational corporations and other business enterprises must respect the human right to adequate housing, including the prohibition on forced evictions, within their respective spheres of activity and influence.

IX. Interpretation

74. These guidelines on development-based evictions and displacement shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee, criminal or humanitarian law and related standards, or rights consistent with these laws and standards as recognized under any national law.

Endnotes

1. Presented in the report of the UN Special Rapporteur on Adequate Housing, A/HRC/4/18, February 2007. Available at: http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf
2. For different language handbooks on the *UN Guidelines*, please see 'HLRN Tools on Forced Eviction and Resettlement' at: <http://hln.org.in/forced-evictions>
3. Report of the Special Rapporteur on adequate housing, E/CN.4/2006/41, 21 March 2006. Available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>
4. This has been established in numerous Supreme Court decisions, including *U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd*; *Chameli Singh and others v. State of UP* [(1996) 2 SCC 549 132]; *Francis Coralie v. Union Territory of Delhi* (AIR 1981 SC 746, at 753); *Shantistar Builders v. Narayan Khimalal Totame* [(1990) 1 SCC 520]; *Olga Tellis v. Bombay Municipal Corp.* [(1985) 3 SCC 545].
Judgments that reaffirm the need to uphold international law and treaty obligations include: *Madhu Kishwar v. State of Bihar* [(1996) 5 SCC 125]; *Gramophone Co. of India v. B.B. Pandey* [1984 (2) SCC 534]; *PUCL v. Union of India* [1997 (3) SCC 433]; and, *CERC v. Union of India* [(1995) (3) SCC 42].
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Based in New Delhi, India, **Housing and Land Rights Network (HLRN)** works for the recognition, defence, promotion, and realisation of the human rights to adequate housing and land, which involve gaining and sustaining a safe and secure place for all individuals and communities, especially marginalized groups, to live in peace and dignity.

Though the human right to adequate housing is an internationally recognized human right, integral to the realisation of several other human rights, around half the world's population does not enjoy all the entitlements necessary for housing to be considered *adequate*. Aggravating the dire global housing crisis is the unprecedented rise in forced evictions. In India, large infrastructure projects; city 'beautification' and urban renewal; mega events; Special Economic Zones; industrial development and takeover of agricultural land; real estate speculation; 'smart city' development; and, privatisation of housing and basic services, are some of the principal factors leading to the forced eviction of individuals and communities from their homes and habitats. Forced evictions violate a range of human rights and most severely impact women, children, persons living in poverty, indigenous/tribal peoples, minorities, persons with disabilities, older persons, and other marginalized groups.

This Handbook, prepared by HLRN, provides a summary and the actual text of the **United Nations (UN) Basic Principles and Guidelines on Development-based Evictions and Displacement** (*UN Guidelines*), acknowledged by the UN Human Rights Council in December 2007. The *UN Guidelines* seek to promote the realisation of the human right to adequate housing; minimize displacement; and, promote sustainable alternatives to evictions. In the event that evictions are inevitable in 'exceptional circumstances,' the *UN Guidelines* lay down certain non-negotiable human rights standards that must be respected and upheld prior to, during, and after evictions.

For more information on HLRN's campaign to promote awareness on, and adoption of, the *UN Guidelines*, please write to: <contact@hln.org.in> or <noevictions@hln.org.in>



HOUSING AND LAND RIGHTS NETWORK