

THE HUMAN RIGHTS TO ADEQUATE HOUSING AND LAND IN INDIA

STATUS UPDATE 2013



Housing and
Land Rights
Network

Habitat International Coalition -
South Asia

HOUSING AND LAND RIGHTS NETWORK

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Introduction

The human right to adequate housing is guaranteed and protected in international law and has been upheld by the Supreme Court of India, in various judgements, as an integral part of the fundamental right to life (Article 21 of the Constitution of India). The majority of the Indian population, in urban and rural areas, however, lives in extremely inadequate and insecure conditions without basic services, including water, sanitation, and access to healthcare.

India is estimated to have the highest number of people displaced annually as a result of ostensible ‘development’ projects. Independent experts estimate the number of those displaced by such projects since India’s independence (1947), to be between 65 and 70 million.¹ Of the displaced, over 40 per cent are tribals and another 40 per cent consist of Dalits and other rural poor.²

Urban Housing and Living Conditions

The national urban housing shortage was estimated at 26.53 million during the Eleventh Five-Year Plan (2007-2012), but according to a recent Report of the Technical Group on Urban Housing Shortage (2012-17) the national urban housing shortage at the end of 2012 was 18.78 million houses. Ninety-five per cent of this shortage or 17.96 million dwelling units are for Economically Weaker Sections (EWS) and Low Income Groups (LIG).³

Despite a shortage in urban dwelling units, a significant number of houses in urban India are estimated to be lying vacant. Data from the 2011 Census of India reveals that an estimated 11 million houses are lying vacant.

About 31 per cent of the Indian population, that is about 380 million people, live in urban areas and this is estimated to increase to about 600 million by 2030.⁴

The economic dynamism that characterises Indian cities today cannot be comprehended without recognising the salience of the urban workforce in the informal and unorganised sector. In the absence of affordable adequate housing options, millions of such workers, unfortunately, internalise costs of their labour by living in inadequate habitations. Such habitations are often referred to as ‘slums’ in official discourse.

As per the Census of India 2011, 17.4 per cent of urban households in India or a total of 13.75 million households live in ‘slums.’ Organizations working on issues of urban poverty and housing, however, believe that this figure is an underestimation as the number of those living in inadequate housing conditions is much greater. A ‘slum’ for the purpose of the Census has been defined as, “residential areas where dwellings are unfit for human habitation by reasons of dilapidation, overcrowding, faulty arrangements and design of

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1 According to the Draft Approach Paper for the Twelfth Five-Year Plan of the Planning Commission (August 2011), the number of people displaced since independence is 60 million.

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

3 Report of the Technical Group on Urban Housing Shortage (2012-17) (TG-12), Ministry of Housing and Urban Poverty Alleviation, National Buildings Organisation, Government of India. Available at: http://mhupa.gov.in/W_new/urban-housing-shortage.pdf

4 Twelfth Five-Year Plan, *Faster, More Inclusive and Sustainable Growth*, Volume I, Planning Commission, Government of India, 2013. Available at: http://planningcommission.gov.in/plans/planrel/12thplan/pdf/12fyp_vol1.pdf



such buildings, narrowness or faulty arrangement of street, lack of ventilation, light, or sanitation facilities or any combination of these factors which are detrimental to the safety and health.”⁵ The top five metro cities – Mumbai, Delhi, Chennai, Hyderabad and Kolkata, account for more than 50 per cent of total ‘slum’ households in the country. At an all-India level, about 64 per cent of households living in slums/informal settlements do not have tap water, sanitation and electricity in their homes.

In many Indian cities, urban land allocated for EWS housing continues to be diverted for profitable real estate and infrastructure projects, while legislative tools are used to condemn the urban poor as ‘illegal.’ The continued use of terms like ‘slum’ and ‘encroacher’ constitute the framing of urban governance issues in a manner that not only discounts the significant contribution to the economy by members of urban households living in inadequate conditions and poverty, but also reveals a strong prejudice against them, which is reflected in policy and programme formulation and implementation. This is also evident in continued state apathy to the issue of homelessness at both the state and central government level; rising incidences of forced evictions around the country, and, the absence of human rights-based policies and laws on housing.

HOUSING AND HOMELESSNESS IN DELHI

Housing Shortage

2.4 million units in 2021, projected by the Ministry of Urban Development.

Homeless Deaths

6,861 people have died on the streets between 2007 and 2011 (according to information revealed from the Delhi Police through a Right to Information application filed by *Shahri Adhikar Manch: Begharon Ke Saath – Urban Rights Forum: With the Homeless*).

Number of homeless people in Delhi

150,000 – 200,000

Number of homeless shelters

231 (147 temporary and 84 permanent shelters, covering less than two per cent of the homeless population)

[Source: *Shahri Adhikar Manch: Begharon Ke Saath*, New Delhi, 2013]

⁵ *Housing Stock, Amenities and Assets in Slums – Census 2011*, Registrar General and Census Commissioner India. Available at: http://www.censusindia.gov.in/2011census/hlo/Slum_table/Slum_table.html



Homelessness is a critical issue across India but the government, at the central and state level, has done little to address the structural causes that contribute to its rise. According to the Census of 2011, urban India now has 9.42 lakh (942,000) homeless people, an increase of 1.64 lakh (164,000) over the 2001 Census figures. This figure, however, as pointed out by organizations working with the homeless, is a gross underestimation of the real extent of homelessness in India. The 2011 Census reveals that the number of urban homeless now exceeds that of the rural homeless, which is 8.35 lakh (835,000). As per the Census of 2001, the urban homeless population was 7.78 lakh (778,000) while the rural homeless population was higher at 11.65 lakh (11,65,000).⁶

The phenomenon of homelessness is mainly caused by circumstances where people cannot afford any housing and/or have faced forced eviction without resettlement and cannot find a place anywhere else. The current process of urbanisation being promoted by the Indian government, including schemes such as the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), has extremely limited space and resources for the poor as it continues with a focus on large-scale infrastructure development. JNNURM is a central government scheme being implemented jointly by the Ministry of Urban Development and the Ministry of Housing and Urban Poverty Alleviation. Housing projects under JNNURM have been undertaken under the components of Basic Services to Urban Poor (BSUP) for the 65 'mission cities' and Integrated Housing and Slum Development Programme (IHSDP) for other cities and towns. A performance audit report on JNNURM by the Comptroller and Auditor General of India (CAG) in 2013,⁷ however, highlights serious issues of diversion of JNNURM funds, incompleteness of projects, and the risk of ineligible beneficiaries deriving benefits intended for the urban poor.

"A total of 1,517 and 1,998 housing and infrastructure projects respectively were approved for implementation between 2005 and 2011. However, as on 31 March 2011, in respect of the housing projects, only 22 of the 1,517 approved projects were completed."

Report of the Comptroller and Auditor General of India, 2013.

⁶ 'India's urban homeless increasing rapidly,' The Times of India, 14 August 2013. Available at:

http://articles.timesofindia.indiatimes.com/2013-08-14/india/41409582_1_urban-homeless-urban-population-growth-rate

⁷ Comptroller and Auditor General of India, Performance Audit on Jawaharlal Nehru National Urban Renewal Mission, 2012-13.

Available at: http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Government_Wise/union_audit/recent_reports/union_performance/2012_2013/Commercial/Report_15/Report_15.html

State policies and interventions across India need to ensure the availability of affordable rental housing, which is the only option for a large section of the population. In its recent report on Policy and Interventions to Spur Growth of Rental Housing in India, the Task Force on Rental Housing⁸ has also underscored rental housing as the only sustainable option for households from lower income groups and economically weaker sections of the society. According to the report, the rental housing market in India forms about 30 per cent of all dwellings in urban India. Not only is the government reluctant in regulating prices of inelastic goods and services, but continues to challenge the security of tenure in ‘notified,’ ‘recognised’ and ‘identified’ slums.

Forced Eviction in Ejipura/ Koramangala, Bangalore

From 18–21 January 2013, *Bruhat Bangalore Mahanagara Palike* (BBMP), a civic body responsible for providing infrastructure and services in the Greater Bangalore Metropolitan area, demolished 1,200 homes and evicted over 5,000 people living in economically weaker section (EWS) quarters in Ejipura / Koramangala, Bangalore. The demolition affected around 1,200 women and 2,000 children. The four-day demolition drive razed around 900 tin sheds that were built at the site more than 11 years ago. BBMP did not follow any due process for the eviction. The residents were given no prior notice of the demolition, neither were they provided with any time to collect their belongings before the bulldozers demolished their homes. The demolition was carried out in the presence of a large police force that allegedly used force against the residents.

Rosemary, a sixty-year-old woman, one of the thousands rendered homeless by BBMP’s demolition drive, died after spending nearly three days out in the open.

According to a fact-finding mission carried out in February 2013 by *Housing and Land Rights Network* and *People’s Union for Civil Liberties, Karnataka*, the forced eviction violated a range of human rights of the residents, including their human right to adequate housing, work/livelihood, health, food, water, education, and security of the person and home.

The fact-finding mission also concluded that the demolition was unlawful and violates BBMP’s own resolutions as well as state, national, and international law. It also reveals a strong collusion between the state government and the private builder responsible for developing the site.

At present the land is lying vacant and the affected people have relocated to various places in and around Bangalore. Few families are still residing on pavements, in Slum Board Quarters and in nearby settlements. Most families have shifted to Sulikunte Village, which is about 18 kilometres away from the city. The state has not provided any relief or rehabilitation for the majority of the families.⁹

8 *Report on Policy and Interventions to Spur Growth of Rental Housing in India*, The Task Force on Rental Housing, Ministry of Housing and Urban Poverty Alleviation, Government of India, March 2013. Available at: http://mhupa.gov.in/W_new/Final%20Report%20of%20the%20Task%20Force%20on%20Rental%20Housing_Sept%202013.pdf

9 *Governance by Denial: Forced Eviction and Demolition of Homes in Ejipura / Koramangala, Bangalore - Final Report of a Fact-finding Mission*, Housing and Land Rights Network – Delhi, and People’s Union for Civil Liberties – Karnataka, New Delhi, 2013.

Housing and Land Rights Network (HLRN) has attempted to track forced evictions across India during 2013. The data is not complete, but according to information received on major incidences of forced evictions, at least 11,400 families were forcibly evicted from their homes in 2013, for reasons ranging from road widening to city beautification. This indicates that at least 60,000 persons, including women, children, members of religious minorities, Scheduled Castes, persons with disabilities, and older persons have been affected and have witnessed violations of their human rights. Rehabilitation has reportedly not been provided in most of the cases of eviction, and the majority of the displaced families have been left to fend for themselves



RESIDENTS OF MANSAROVAR PARK, DELHI - AFTER THE DEMOLITION OF THEIR HOMES BY THE DELHI GOVERNMENT IN DECEMBER 2013

SOME INCIDENCES OF FORCED EVICTION IN THE YEAR 2013				
	Area and City	Month of Eviction	Reason for Eviction	Number of Families Evicted
1.	Ejipura / Koramangala, Bangalore	January	Construction of a mall and EWS apartments by a private builder	1,200
2.	Satellite, Ahmedabad	January	Site clearing	55
3.	Sankalitinagar, Juhapura, Ahmedabad	January	Clearing of roadside	45
4.	Gulby, Navrangpura, Ahmedabad	January, July, October	Road widening	187
5.	Sonia Gandhi Camp, R. K. Puram, New Delhi	March – April	Road extension	50
6.	Golibar, Mumbai	April	Construction of apartments by a private contractor	43
7.	Gopi Talao, Surat	April	Lake development and Bus Rapid Transit System (BRTS) corridor	1,412 (and 104 shops)
8.	Ali Talao, Mumbai	May	Clearing of land for other projects	300
9.	Kabo Leikai, Imphal	May	Construction of a five-star hotel	32
10.	Gayakwad Nagar, Faridabad	June	Reclaiming of land by the Indian Railways	1,000
11.	Ganapati Nagar and Adarsh Nagar, Mumbai	June	Extension of a sewage line	550

SOME INCIDENCES OF FORCED EVICTION IN THE YEAR 2013				
	Area and City	Month of Eviction	Reason for Eviction	Number of Families Evicted
12.	Surat: Rusulabad Indira Nagar, Khadi Mohalla, Prem Nagar, Navsari Bazar and Subhas Nagar Pala	January to August	Various infrastructure projects	5,050
13.	Vastrapur, Ahmedabad	August	Construction of an over-bridge	110
14.	Gomatipur, Salalnagar, Ahmedabad	October	Construction of housing under Rajiv Awas Yojana	240
15.	Vajelpur, Ahmedabad	November and December	Road widening	147
16.	Naroda, Ahmedabad	December	Construction of housing under Rajiv Awas Yojana – Public Private Partnership project	350
17.	Ranip, Bakaramandi, Ahmedabad	December	Road widening	150
18.	South Zone, Ahmedabad	December	Demolition of temporary housing	88
19.	Mansarovar Park, New Delhi	December	Reclaiming of land by the Indian Railways	250
20.	Nehru Nagar, New Delhi	December	Reclaiming of land by the Indian Railways	50

In the wake of the rampant evictions and demolitions of informal settlements prior to the Commonwealth Games in 2010, HLRN published a fact-finding report titled, “Planned Dispossession: Forced Evictions and the 2010 Commonwealth Games” in February 2011. Two years later, HLRN carried out a study to assess the situation on the ground for the evicted families. In the absence of a comprehensive rehabilitation policy in Delhi and the act of declaring most of the evicted persons ‘ineligible’, the majority of the affected families were rendered homeless. Many of the sites from which the families were evicted, including Jhansi Camp, Swatantra Camp and Prem Nagar JJ Camp, are still lying unused or vacant. Despite the passage of over four years since the Commonwealth Games evictions, the Government of Delhi has not undertaken any measures to rehabilitate families and to enable the displaced families to return to their original sites of habitation and rebuild their homes. Those who continue to live in and around the original sites have experienced a significant decline in their standard of living, including in the quality of their housing. Continued threats of eviction and a lack of available resources, have forced many families to live in extremely inadequate temporary structures.



FAMILIES DISPLACED FOR THE 2010 DELHI COMMONWEALTH GAMES

For the few families who received resettlement in Savda Ghevra or Bawana, the living conditions at the resettlement sites are grossly inadequate, with an absence of basic services and social amenities. The resettled families live in inadequate housing with no security of tenure and limited access to livelihoods, education and healthcare. All families interviewed for the HLRN study reported an adverse impact on their livelihoods, including a significant decrease in their income. Children of almost all families either have to travel greater distances to reach schools or have had to drop out. Women face some of the most adverse impacts of forced evictions. Most women had to stop working in the aftermath of the evictions in order to take care of their families. While some women have resumed working, others are still not able to find work. Homeless women have no access to toilets and find themselves vulnerable to daily acts of violence and abuse. The act of forced eviction and the resulting failure of the state to provide rehabilitation and redress, clearly violate a range of human rights of the affected persons.

Forced Eviction in Sevanagar, Vishakhapatnam

Sevanagar was formed in 1948 with 150 families belonging to Scheduled Castes and Backward Classes. In 1988, it was formally recognised as a 'notified slum' by the Municipal Corporation. By 2003, the population of the area had reached 714 families. The families were denied basic amenities owing to their settlement on Railway land. The Railways claimed that around 3.3 acres of this area belonged to them. Five eviction drives had already been carried out in the settlement and the residents faced the threat of eviction on a repeated basis.

In 1993, Railway authorities tried to evict the residents but the residents moved the High Court of Andhra Pradesh. In 2003, the High Court gave a verdict in favour of the residents that stated that the residents could not be evicted unless provided with due resettlement and rehabilitation. In 2008, the Greater Vishakhapatnam Municipal Corporation (GVMC) carried out an enumeration of 'beneficiaries' for the provision of resettlement and rehabilitation, but the process lacked transparency. 513 beneficiaries were identified, but this list included 157 false names ('benamies') and excluded 272 genuine residents' names.

The Association of Regional Tribal Development (ARTD) started working in the area in 2009, and negotiated with the concerned departments and people's representatives to ensure basic amenities for the settlement. They mobilised resources from the Members of Parliament Local Area Development Scheme (MPLADS) funds of Smt. Purandeswar, Union Minister of Human Resource Development, and successfully procured drinking water and electricity for the community. To eliminate bogus names and enter genuine names in the beneficiary list, the Sevanagar Scheduled Caste Society approached the High Court of Andhra Pradesh. In 2010, the High Court gave a verdict that called for a re-survey and for the identification of the original beneficiaries.

The efforts of ARTD and the community association, however, were in vain. In December 2011, the then new Greater Vishakhapatnam Municipal Corporation (GVMC) Commissioner, B. Ramanjaneyulu, forcefully evicted the slum, without providing prior notice to its residents. As a result, 168 children lost an entire academic year; 250 families immediately lost livelihoods, as the cost of transportation to their work places was too high (Rs 50 - 60 per day).

ARTD filed cases with the National Commission for Protection of Child Rights, State Human Rights Commission and National Commission for Scheduled Castes. As a result of these cases, Andhra Pradesh State Road Transport Corporation (APSRTC) provided buses to the resettlement colony under JNNURM, and GVMC constructed a school building for the affected children.

After the eviction, all the families lost their livelihood while 38 people lost their lives, reportedly as a result of the trauma of losing their homes. The poor quality of housing and the absence of basic amenities and livelihood options have made the lives of the displaced people miserable. People continue to struggle for a better rehabilitation package and for the realisation of their human rights.

Rural Housing, Land and Living Conditions

In India, about 68.84 per cent of the total population lives in rural areas (Census 2011) and around 70 per cent of the population earns its livelihood from agriculture. India has the largest number of rural poor as well as the largest number of landless households in the world. Processes of land alienation, combined with promotion and marketisation of high cost external inputs for housing and habitat have created inequities in access to and control of housing and livelihood assets. Furthermore, inconclusive and insufficient data on manifest homelessness and inadequate living conditions in rural areas has resulted in the lack of appropriate government response.

The total national rural housing shortage according to a report for the Twelfth Five-Year Plan (2012-2017) was estimated at 40 million households, of which 90 per cent were 'below poverty line' households.¹⁰ While the figure of housing shortage is not all-inclusive, when it comes to measuring state performance in housing in rural areas, the achievement of targets has been very low. Indira Awas Yojana (IAY) is the flagship rural housing scheme of the Ministry of Rural Development for 'below poverty line' (BPL) families, especially of Scheduled Castes and Scheduled Tribes. The budgetary outlay for rural housing was increased to Rs 110.75 million in 2012-13 for construction of 3.01 million houses. According to the Ministry of Rural Development, between 2001-02 and 2011-12, a total number of 20.18 million houses have been constructed.¹¹ In January 2013, the budgetary allocation for construction of each housing unit under IAY was increased from Rs 45,000 to Rs 70,000. There has also been an increase in the budget from Rs 10,000 to Rs 20,000 for a homestead site to rural BPL households who have neither agricultural land nor a house site. Beneficiaries of IAY are also being provided an additional assistance of Rs 9,000 for the construction of a toilet.



While Indira Awas Yojana is a centrally sponsored scheme, state governments have also introduced schemes to tackle housing shortage and to address housing improvement needs. The combined response, however, remains incommensurate with the magnitude of homelessness and landlessness in rural areas. The interconnectedness of the right to land and right to adequate housing is evident in rural India. Land ownership is critical for availing funds

10 Working Group on Rural Housing for XII Five-Year Plan, Ministry of Rural Development, Government of India, September 2011. Available at: http://planningcommission.nic.in/aboutus/committee/wrkgrp12/rd/wggrp_iay.pdf

11 Reference Note on Rural Housing: Indira Awas Yojana, No.11/RN/Ref./August/2013, Lok Sabha Secretariat. Available at: <http://164.100.47.134/intranet/RuralHousingIndiraAwasYojana.pdf>

under government housing schemes¹² and accessing funds from banks and financial intermediaries. Though the IAY Guidelines of 2013 recommend the provision of 10 cents¹³ of land for housing for the landless, the final decision on the allocation of land is left to the discretion of state governments.

Apropos actual delivery by IAY, the funds provided are inadequate for houses employing conventional building materials and skilled workers. Given the scarcity of mechanisms for the construction of ecologically sustainable, financially viable, and easy to build and maintain structures, people are forced to resort to building inadequate homes, sometimes with cheap roofing materials like metal sheets that are highly unsuitable for extreme weather conditions. Housing programmes of the government are yet to formulate measurable and reliable human rights-based indicators on enhanced availability of services, affordability, accessibility and habitability of housing.

In its Draft National Land Reforms Policy of July 2013,¹⁴ the Ministry of Rural Development has provided figures on the distribution of land in India, according to which 31.12 per cent of households are landless and another 29.82 per cent of households own less than 0.4 hectares of land. According to the Twelfth Five-Year Plan, although half of India's population continues to depend on agriculture as its primary source of livelihood, 83 per cent of farmers operate holdings of less than two hectares in size, and the average holding size is only 1.23 hectares.¹⁵

Displacement from Infrastructure and other Projects

Large infrastructure projects, including dams, ports and mining, environmental conservation projects, and designation of large areas as tax-free Special Economic Zones (SEZs), have been responsible for the displacement of millions of rural families, most of whom have not received any form of rehabilitation.

The majority of natural resource rich areas in central and eastern India are occupied by indigenous peoples (Scheduled Tribes / *adivasis*) who face the worst onslaught of large dams, mining, and other natural resource extraction projects. In the north-eastern state of Arunachal Pradesh, over 160 Memorandums of Understanding have been signed to construct dams.¹⁶

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Forest Rights Act), a progressive law aimed at recognising the rights of forest dwellers, has not been adequately implemented in many states, especially with regard to the provision of collective rights. A remarkable development in 2013 may, however, alter the course of mediation in cases of unlawful and socio-ecologically deleterious land acquisition. In August 2013, members of the Kondh (a Scheduled Tribe) community residing in 12 villages in Odisha rejected Vedanta's bauxite mining proposal in the Niyamgiri Hills in a referendum that was held following orders of the Supreme Court of India. The aim of the referendum was to seek consent of the villagers on the legal ground (under the Forest Rights Act) of

CWC Report Recommends Halting Construction of 15 Dams in Arunachal Pradesh¹⁷

A report of the Central Water Commission (CWC) has recommended that construction of 15 of the 44 proposed dams along the Siang River in Arunachal Pradesh should be stopped, on account of the possibility of widespread damage to the river ecology and biodiversity.

12 Indira Awas Yojana, Guidelines 2013, Ministry of Rural Development, Government of India. Available at: <http://iay.nic.in/netiay/IAY%20revised%20guidelines%20july%202013.pdf>

13 One cent is equal to 40.5 square metres of area.

14 Draft National Land Reforms Policy 2013, Ministry of Rural Development, Government of India. Available at: http://dolr.nic.in/dolr/downloads/pdfs/Draft_National_Land_Reforms_Policy_July_2013.pdf

15 Twelfth Five-Year Plan, *Faster, More Inclusive and Sustainable Growth*, Volume I, Planning Commission, Government of India, 2013. Available at: http://planningcommission.gov.in/plans/planrel/12thplan/pdf/12fyp_vol1.pdf

16 'Arunachal dams: Despite issues, govt collected crores,' Hindustan Times, 30 April 2013, Available at: <http://www.hindustantimes.com/india-news/arunachal-dams-despite-issues-govt-collected-crores/article1-848187.aspx>

17 'Scrap 15 of 44 Dams Planned Across Siang in Arunachal: CWC Report,' The Hindu, 17 February 2013. Available at: <http://www.thehindu.com/sci-tech/energy-and-environment/scrap-15-of-44-dams-planned-across-siang-in-arunachal-cwc-report/article5696890.ece>

recognising the customary right of the tribal group to worship the mountain. Thereof, the Ministry of Environment and Forests (MoEF) denied the Orissa Mining Corporation (a joint venture between the Government of Odisha and Vedanta Alumina) permission for mining bauxite in 660.75 hectares of forest land in Kalahandi and Rayagada districts of Odisha.¹⁸

Unfortunately though, in the bordering state of Andhra Pradesh, the Ministry of Environment and Forests (MoEF) gave conditional clearance to the Rs 16 million Polavaram Irrigation Project on the Godavari River, which is expected to irrigate about 300,000 hectares of land in coastal Andhra Pradesh. The irrigation will be at the expense of vast areas covering 289 villages of Telangana that are likely to be submerged, and the further displacement of 177,275 people, of which 60,770 people belong to *adivasi* communities.¹⁹ Their interests must be protected under provisions of the Panchayat (Extension to Scheduled Areas) Act 1996, and the Forest Rights Act 2006.

In Odisha, the proposed construction of a steel plant by the South Korean company - POSCO, is another striking example of unjust and forced acquisition of land. The project is expected to cover 4,000 acres of land in the Ersama block of Jagatsinghpur District. The steel plant when complete, is likely to withdraw an estimated 38 million litres (10 million gallons) of water daily from the water sources that supply the nearby cities of Cuttack and Bhubaneswar. The project reportedly threatens to displace over 22,000 people in the Jagatsinghpur District, and disrupt the livelihoods of many thousands more in the surrounding area. In February 2013, the Government of Odisha used police force for acquiring land from villagers in Gobindpur Village. Twelve police platoons inflicted brutal violence upon men, women, children and older persons. The violence against, and strong resistance from, the villagers to the takeover of their land clearly belies the claim of the Odisha government that the land acquisition process has been voluntary.²⁰ The area continues to be surrounded by police, who have restricted normal movement of people in and out of their villages, even for medical reasons.

In July 2010, a report of a committee set up by the Ministry of Environment and Forests (MoEF) stated that the POSCO project involved grave violations of environmental laws and forests rights. It also reported fabrication of evidence and suppression of information by POSCO India Pvt. Ltd. Despite recommendations of the committee calling for the prosecution of authorities responsible for the violation of environmental laws and provisions of the Forest Rights Act, the Government of India gave forest and environmental clearance to the POSCO project in 2011. In 2012, the National Green Tribunal (NGT) suspended the environmental clearance accorded to POSCO. In October 2013, eight human rights experts of the United Nations called for the immediate halt to the POSCO project, citing serious human rights concerns.²¹ In January 2014, however, the Government of India revalidated the environmental clearance, and in April 2014, the NGT issued a notice challenging the revalidation of environment clearance for the POSCO steel plant. As the fate of the affected communities hangs in balance, their non-violent struggle for life and livelihood continues.

18 'Jolt for Vedanta as mining in Niyamgiri Hills voted out,' Business Standard, 30 July 2013, Available at:

http://www.business-standard.com/article/companies/jolt-for-vedanta-as-mining-in-niyamgiri-hills-voted-out-113072901040_1.html

19 'Telangana might say no to Polavaram,' Down to Earth, 31 July 2013, Available at:

<http://www.downtoearth.org.in/content/telangana-might-say-no-polavaram>

20 'Violence against Villagers and Forced Land Acquisition for POSCO Project in Odisha: Gross Violation of Human Rights,' HLRN Press Release, 8 February 2013. Available at: http://www.hic-sarp.org/documents/Press_Release_POSCO_HLRN_8_Feb_2013.pdf

21 The eight experts include, the UN Special Rapporteur on human rights and extreme poverty, Magdalena Sepúlveda; the UN Special Rapporteur on adequate housing, Raquel Rolnik; the UN Special Rapporteur on the right to food, Olivier De Schutter; the UN Special Rapporteur on the human right to water and sanitation, Catarina de Albuquerque; the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai; the UN Independent Expert on the promotion of an equitable and democratic international order, Alfred de Zayas; the UN Special Rapporteur on the right to health, Anand Grover; and, Working Group on the issue of human rights and transnational corporations and other business enterprises, Pavel Sulyandziga (Chair). Their statement is available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13805&LangID=E>



BETEL VINES OF VILLAGERS AT THE POSCO SITE

The Indira Sagar Dam Reservoir, India's largest and the second largest reservoir in Asia, will displace about 50,000 families or nearly 300,000 people from 254 villages in Madhya Pradesh. The promise of providing land in return for land to the displaced people has not been fulfilled, and about 85 per cent of the displaced farmers are being reduced to the status of landless workers.²² The 'Jal Satyagraha' (a non-violent action of people standing in rising river waters) of people evicted from their lands for the Indira Sagar Dam project in Madhya Pradesh, which lasted from 1-11 September 2013, drew attention to the injustice done to thousands displaced by various dam projects constructed on the Narmada River and its various tributaries.



Photo: Narmada Bachao Andolan

NARMADA JAL SATYAGRAHA 2013

The Sardar Sarovar Project is the largest dam to be built on the Narmada River. It has a proposed final height of 163 metres (535 feet). At full height, the Sardar Sarovar dam is estimated to submerge around 200 square kilometres while affecting 250,000 people in 242 villages. In October 2013, the Narmada Bachao Andolan (NBA) urged the central government to stop the Sardar Sarovar Project at its present height of 122 metres, which would bring the requisite benefits without uprooting thousands of rural and tribal people. There are 250,000 people in 245 villages still residing in the submergence zones, as there is no land to rehabilitate them. In the last 30 years, less than 30 per cent of the canal network has been laid and even then, the Gujarat government has decided to de-notify 400,000 hectares from the project command area to reserve it for SEZs and other private companies.²³

22 'The water warriors,' The Hindu, 15 September 2013. Available at: <http://www.thehindu.com/news/national/other-states/the-water-warriors/article5129003.ece>

23 'NBA opposes raising height of Narmada dam,' The Hindu, 19 October 2013. Available at: <http://www.thehindu.com/news/national/nba-opposes-raising-height-of-narmada-dam/article5248925.ece>

As of August 2013, a total of 595 SEZs across India have been formally approved under the Special Economic Zones Act 2005.²⁴ In 2013, the case of the SEZ in Mundra, Gujarat, gained focus, after an independent environmental panel constituted by the Ministry of Environment and Forests held that the Adani Group had violated environmental norms. The report of an independent committee²⁵ contains established evidence of destruction of commons that provide critical ecological goods and services, and are necessary for sustainable local livelihoods.

Law and Policy

1. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013,²⁶ replaces the Land Acquisition Act 1894. While the new law is a considerable improvement over the colonial legislation that it replaces, it still invests the power of eminent domain in the state; does not clearly define public purpose; and does not aim to protect the human rights of the affected population. Under the new Act, compensation for the owners of the acquired land is stipulated to be paid at four times the market value in case of rural land and twice the market value for urban land. In case of acquisition of land for use by Public Private Partnership (PPP) projects, consent of 70 per cent of the affected landowners is required whereas for projects of private companies, consent of 80 per cent of the affected land owners is required. The provisions of this Act, however, do not apply to acquisitions under 13 existing legislations, including the Special Economic Zones Act 2005; the Atomic Energy Act 1962; and, the Railways Act 1989.

Under the new law, the process for land acquisition involves a Social Impact Assessment survey (except for irrigation projects); preliminary notification stating the intent for acquisition; a declaration of acquisition; and, compensation to be provided by a stipulated time. All acquisitions require rehabilitation and resettlement to be provided to the people affected by the acquisition.

2. Model State Affordable Housing Policy for Urban Areas

In October 2013, the Ministry of Housing and Urban Poverty Alleviation introduced the draft Model State Affordable Housing Policy for Urban Areas. The aim of this policy is to create an enabling environment for providing “affordable housing for all” with special emphasis on EWS, LIG, and other vulnerable sections of society, such as Scheduled Castes / Scheduled Tribes, Backward Classes, minorities and senior citizens and physically challenged persons in the state. The policy also claims to ensure that no individual will be left ‘shelterless.’ The Policy further aims to promote Public Private People Participation (PPPP) for addressing the shortage of adequate and affordable housing. The policy allows households with an annual income of up to Rs 200,000 to apply for subsidised houses. The houses with a proposed carpet area of 21-27 square metres and 28-60 square metres, respectively for the EWS and LIG income categories,²⁷ would be developed in partnership with either state housing boards or private developers. While the central government will provide Rs 75,000 per dwelling unit to the project developer, state governments will contribute by providing incentives like subsidised land for housing and fast project approvals to developers to facilitate accelerated construction.²⁸

24 ‘SEZ Exports Stood at Rs. 1.3 Lakh Crores in First Quarter of 2013-14,’ Press Information Bureau, Ministry of Commerce and Industry, Government of India, 5 August 2013. Available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=97625>

25 Report of the Committee for Inspection of M/s Adani Port and SEZ Ltd. Mundra, Gujarat, April 2013. Available at: <http://envfor.nic.in/assets/adani-report-290413.pdf>

26 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, Ministry of Law and Justice, Government of India. Available at: http://dolr.nic.in/dolr/downloads/pdfs/Act_Land_Acquisition_2013.pdf

27 Model State Affordable Housing Policy for Urban Areas 2013, Ministry of Housing and Urban Poverty Alleviation, Government of India. Available at: http://mhupa.gov.in/W_new/Model_State_Affordable_Housing_Policy_Draft.pdf

28 Draft Model State Affordable Housing Policy, September 2013, Ministry of Housing and Urban Poverty Alleviation, Government of India. Available at: http://mhupa.gov.in/W_new/Model_State_Affordable_Housing_Policy_Draft.pdf

3. Draft Land Titling Bill 2011²⁹

The Bill provides for the registration of all immovable property to establish a system of conclusive, electronically recorded titles. It also provides for a mechanism to invite objections and for the resolution of disputes through special tribunals. The property record will be considered as conclusive ownership by the person mentioned. This will help resolve uncertainties in property transactions. Given that land is a state subject in India, the Bill is meant to be a model law for adoption by state governments.

According to the 2011 Draft Bill, preparation of a Register of Titles will be taken up based on available land record data, followed by objectors furnishing details within a prescribed time period. If no dispute is brought to notice, then the title would be granted. Disputes come within the purview of the Tribunal and state level Appellate Court. The 2010 Draft Bill contained minimal mention of site verification and enquiries by the Director, Title Registry, in order to facilitate registration at the local level, but the 2011 Draft Bill shifts the responsibility of registering land onto the land owners, thus imposing transaction costs on economically and politically disadvantaged persons. A failure to meet the requirements of the process in a time-bound manner could lead to dispossession.

4. The Real Estate (Regulation and Development) Bill 2013³⁰

The Real Estate (Regulation and Development) Bill 2013 was approved by the Union Cabinet in June 2013. The proposed Bill applies to residential real estate – housing and any other independent use ancillary to housing. Once enacted, the Bill aims to establish a Real Estate Regulatory Authority and a Real Estate Appellate Tribunal in every state for regulation of the real estate sector and for speedy dispute resolution. It contains provisions for registration of real estate projects and real estate agents with the Real Estate Regulatory Authority; functions and duties of promoters and agents; and rights and duties of allottees. It also seeks to impose stringent penalties on habitual offenders and ensure consumer protection and standardisation in business practices and transactions in the real estate sector.³¹

Though the Bill aims to promote transparency and ethical business practices, and to reduce the power asymmetry prevalent in real estate transactions, given the strength of the real estate mafia in India and widespread corruption in the sector, its efficacy will first depend on whether it is adopted as law and then how adequately it is implemented.

5. Rajiv Awas Yojana

Rajiv Awas Yojana (RAY) is a programme of the central government aimed at providing property rights to residents in informal settlements. Visualised as a continuation of the JNNURM policy launched in 2004, RAY envisages a “Slum Free India” with inclusive and equitable cities in which every citizen has access to basic civic and social services and decent shelter. At the core of the programme lies the objective of provisioning of housing stock with basic civic infrastructure and social amenities to those who reside in habitats defined as ‘slums,’ which will result in the incorporation of informal settlements into the formal system. The preparatory phase for the programme ended in 2012 and pilot projects were invited from all the states in the country to commence implementation of the programme. An analysis of approved pilot projects indicates an unequal distribution of pilot project approval across the country, with a concentration of projects occurring in eight states. Further, while a large percentage of projects are for *in situ* (on site) redevelopment of settlements, a competing percentage of approvals has gone to projects that are focused on relocation of identified settlements. Announced in 2009, the scheme has covered 20 states. The projects are in the preparatory phase in 16 states and in the implementation phase in four states. As of November 2013, the total cost of the approved projects is Rs 248 billion.³²

29 Draft Land Titling Bill 2011, Ministry of Rural Development, Department of Land Resources, Government of India. Available at: http://dolr.nic.in/landtitlingbill_notice.htm

30 The Real Estate (Regulation and Development) Bill 2013, Ministry of Housing and Urban Poverty Alleviation, Government of India. Available at: http://mhupa.gov.in/W_new/Real%20Estate%20Bill%20as%20introduced%20in%20the%20Rajya%20Sabha%20on%2014.8.2013.pdf

31 See note of the Press Information Bureau, Government of India, Ministry of Housing and Urban Poverty Alleviation, 14 August 2013. Available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=98224>

32 RAY Preparatory Phase: Over All Progress (State Wise), December 2013. Available at: http://mhupa.gov.in/ray/Ray_Preparatory_Phase_State_wise.pdf

The first phase of preparation of ‘Slum Free City Plans of Action’ for certain cities has seen the use of outdated and/or incomplete survey data as the basis for plan preparation. As per the definition of ‘tenable’ and ‘untenable’ slums provided by the Model Property Rights to Slum Dwellers Act, 2011, specified in the RAY Guidelines, most settlements are being arbitrarily declared as ‘untenable’ due to which they are considered unviable for upgradation or *in situ* redevelopment and are relocated. Such terminology is against human rights principles. Additionally, reports from beneficiary communities have indicated an unacceptance of the prescribed multi-storied structures that are being touted as ‘solutions’ to the national housing crisis.

Guidelines and Policies Associated with Rajiv Awas Yojana

RAY is governed by several schemes and guidelines, including the Rajiv Awas Yojana Guidelines 2013-2022,³³ the Draft Model Property Rights to Slum Dwellers Act 2011,³⁴ Guidelines on Community Participation 2012,³⁵ Guidelines for the Affordable Housing in Partnership Scheme 2013,³⁶ and, Guidelines for the Preparation of Slum-Free City Plan of Action 2013 – 2022.³⁷

a. Rajiv Awas Yojana Guidelines 2013 – 2022

The stated objective of the RAY Guidelines is to ensure that all existing slums, notified or non-notified (including recognised and identified) are brought within the ‘formal’ system, thereby enabling them to avail basic amenities that are available for the rest of the city.

b. Draft Model Property Rights to Slum Dwellers Act 2011

Prepared by the Union Ministry of Housing and Urban Poverty Alleviation, the draft model law provides every ‘eligible’ slum dweller living in a slum to receive a dwelling place of 25 square metres of carpet area or its equivalent land area at an ‘affordable’ cost. The draft of the Act provides very vague definitions to the terms ‘tenable settlement’ and ‘untenable settlement,’ making practically any slum settlement vulnerable to the possibility of being relocated.

c. Guidelines on Community Participation 2013 – 2022

The Guidelines on Community Participation aim to describe the process of engaging communities in all the stages of RAY, including pre-survey, survey, preparation of slum re-development plans / strategy and Slum Free City Plan of Action (SFCPoA), micro planning i.e. preparation of Detailed Project Report (DPR), implementation of slum redevelopment plans / projects, and operation and maintenance of created assets. It is imperative to initiate a process, which is inclusive and participatory right from the beginning to build stake and ownership of people contributing to their empowerment. The document is technical in nature and does not provide very concrete steps on how to actually empower communities.

d. Guidelines for the Affordable Housing in Partnership Scheme 2013 – 2022

The scheme is a part of the strategy of RAY aimed at preventing the creation of new ‘slums’. It aims to encourage the participation of the private sector in creating an affordable housing stock. One of the components of the

33 Rajiv Awas Yojana Guidelines 2013-2022, Ministry of Housing and Urban Poverty Alleviation, Government of India. Available at: <http://mhupa.gov.in/ray/RAYGuidelines.pdf>

34 Model Property Rights to Slum Dwellers Act 2011, Ministry of Housing and Urban Poverty Alleviation, Government of India. Available at: <http://mhupa.gov.in/ray/05-Model-Property-Rights.pdf>

35 Guidelines on Community Participation 2013-2022, Ministry of Housing and Urban Poverty Alleviation, Government of India. Available at: http://mhupa.gov.in/ray/Planning_guidelines2013.pdf

36 Guidelines for the Affordable Housing in Partnership Scheme 2013- 2022, Ministry of Housing and Urban Poverty Alleviation, Government of India. Available at: http://mhupa.gov.in/W_new/AHP_23_09_2013.pdf

37 Guidelines for Preparation of Slum-Free City City Plan of Action 2013 – 2022, Ministry of Housing and Urban Poverty Alleviation, Government of India. Available at: <http://mhupa.gov.in/ray/RAYGuidelinesSFCP.pdf>

scheme speaks of increasing Floor Area Ratio (FAR) / Floor Space Index (FSI), ground coverage and densification in affordable housing projects. Considering that the carpet area of the dwelling units is already prescribed to be small, providing increased FAR / FSI and densities will only lead to the formation of ‘slum-like’ conditions again, albeit this time it will occur within the formal housing system.

e. Guidelines for Preparation of Slum-Free City Plan of Action 2013 – 2022

The Guidelines aim at aiding in the creation of a city-level action plan with investments prioritised alongside strategies to upgrade existing slums as well as to prevent the formation of future slums. The document introduces a new, transitory definition known as ‘semi-tenable slum,’ wherein the slum is situated on ‘objectionable’ land and is subject to review. Considering the fact that the RAY process is already fairly lengthy, this adds an extra loophole in the course that makes its subjects even further vulnerable. Further, one of the parameters for the analysis of tenable slums is of land value. This invites the involvement of the private developer and could lead to the original residents being confined to only a fraction of the original site.

Apart from the aforementioned, Rajiv Awas Yojana also provides the following guidelines:

- Guidelines for GIS³⁸ Mapping, MIS³⁹ Development and Integration of GIS with MIS 2012⁴⁰
- Guidelines for Capacity Building 2013 – 2022⁴¹
- Guidelines for Preparation of Detailed Project Reports 2013 – 2022⁴²
- Guidelines for Reforms 2013 – 2022⁴³
- Guidelines for Social Audit 2013 – 2022⁴⁴

It is important that RAY focuses on *in situ* upgrading of urban settlements, with the aim of providing adequate basic services and legal security of tenure, and does not facilitate evictions and relocation of communities to peripheries of cities and towns under the guise of rehabilitation. The human right to adequate housing framework should guide the implementation of RAY across India to ensure that it addresses the urban housing crisis in the country.⁴⁵

Recommendations for the Government of India

Given that India will soon have a new government at the centre, HLRN would like to propose the following recommendations aimed at improving housing and living conditions across the country, and at protecting the human rights of marginalised communities and groups.

The government, at the central and state level, should:

1. Draft a comprehensive human rights-based housing law for both urban and rural areas, which includes measures to check real estate speculation, provide low cost housing and prevent forced evictions.
2. Adopt specific time-bound indicators to evaluate the state’s efforts towards addressing the urban and rural housing shortage for EWS and LIG population.
3. Adopt a concrete and time-bound plan of action under the national housing scheme—*Rajiv Awas Yojana*—in order to ensure low cost housing for economically weaker sections, including the homeless, national minorities,

38 Geographic Information System.

39 Management Information System.

40 Available at: <http://mhupa.gov.in/ray/04-RAY-GIS-Guidelines.pdf>

41 Available at: http://mhupa.gov.in/W_new/Ray_Capacity_Building.pdf

42 Available at: <http://mhupa.gov.in/ray/RAYGuidelinesDPR.pdf>

43 Available at: http://mhupa.gov.in/W_new/Ray_Guidelines_on_Reforms.pdf

44 Available at: http://mhupa.gov.in/W_new/Ray_Guidelines_on_Social_Audit.pdf

45 Youth for Unity and Voluntary Action (YUVA) and HLRN organised a consultation in November 2013 to develop indicators to monitor the RAY process as well as projects under RAY. For a list of the indicators, please write to: landhousing@gmail.com

Scheduled Castes and Scheduled Tribes, landless, internally displaced persons and migrant populations. Ensure the adoption of the Human Rights framework for the implementation of RAY.

4. Develop a plan of action to implement the 'Scheme of Shelters for Urban Homeless' under the National Urban Livelihoods Mission, and ensure that adequate budgetary allocations are made to protect the human rights of India's growing homeless population.
5. Implement orders of the Supreme Court of India and state high courts on the issue of housing and homelessness.
6. Implement the UN Guiding Principles on Internal Displacement and the UN Basic Principles and Guidelines on Development-based Evictions and Displacement, and adopt them in national and state laws and policies.
7. Adopt a comprehensive policy on land and agrarian reform, including for redistribution of land to the landless, which is compliant with international human rights standards.
8. Ensure the adequate implementation of The Right to Fair Compensation, Resettlement, Rehabilitation and Transparency in Land Acquisition Act 2013 to guarantee that evictions / relocation take place only in 'exceptional circumstances' and in accordance with international human rights standards; that adequate compensation and rehabilitation is provided for all displaced people; and that the human rights to adequate housing, land, work/ livelihood, health, food, water, security and the rights to resettlement and return are protected.
9. Ensure implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, especially in terms of recognition of collective claims / rights. Also, compile and publicise data on forest dwellers who have been given legal rights under the Act.
10. Take steps to ensure that women are able to claim their rights to inheritance under the Hindu Succession (Amendment) Act 2005, and document cases where the Act is being used to the advantage of women.
11. Initiate measures to implement the Concluding Observations of the United Nations Committee on Economic, Social and Cultural Rights (2008) related to housing, forced evictions and homelessness, including with regard to collecting disaggregated data and developing national policies.
12. Review all draft and pending bills related to housing and land after extensive public consultations. Ensure that the draft Real Estate (Regulation and Development) Bill 2011, Land Titling Bill 2011, and the Mines and Minerals (Development and Regulation) Bill 2011, incorporate international human rights standards and protect human rights, especially of the most vulnerable. Revise the Real Estate (Regulation and Development) Bill 2011 to focus more on curbing real estate speculation and operations of the real estate market.

Conclusion

Housing and living conditions in India, for the majority, continue to be inadequate and fraught with challenges related to accessibility, affordability and habitability. While certain government policies and initiatives aim to redress the housing and land crisis in the country, there is an urgent need for implementation to be guided by the human rights approach, in particular the human right to adequate housing framework. Only then can the government ensure that everyone is able to live in peace, security and dignity, with access to basic services, livelihood options, healthcare, education, food, water and social security. HLRN hopes that the new government will focus on providing low cost adequate housing; undertake efforts to improve living conditions and basic services in urban and rural areas; prevent forced evictions and displacement; ensure human rights based resettlement; prioritise land and agrarian reform; and meet its national and international legal commitments towards promoting the human rights to adequate housing and land across India. The realisation of the human rights to adequate housing and land would also lead to the realisation of other human rights essential to maintain an adequate standard of living in both rural and urban India.⁴⁶

46 For more information, please contact *Housing and Land Rights Network*, Delhi at: hlrnsouthasia@gmail.com / 011-2435-8492.

Housing and Land Rights Network (HLRN) is an integral part of the Habitat International Coalition (HIC). It works for the recognition, defence, promotion, and realisation of the human rights to adequate housing and land, which involves securing a safe and secure place for all individuals and communities to live in peace and dignity. A particular focus of HLRN's work is on promoting and protecting the rights of marginalised communities as well as the equal rights of women to housing, land, property and inheritance. HLRN aims to achieve its goals through advocacy, research, human rights education, and outreach through network-building at local, national and international levels. HLRN's South Asia office is located in New Delhi, India.

In this report, HLRN attempts to highlight key issues and developments, including those related to law and policy, regarding housing and land in urban and rural India in the year 2013. The report also makes recommendations to the Government of India and state governments to improve housing and living conditions across the country, and to promote the realisation of the human rights to adequate housing and land for all.

For more information or to become a member of HIC-HLRN, see: www.hic-sarp.org.



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