

Land Acquisition  
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inflation

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Who is  
Grabbing **Land**?

# Land acquisition: The Human Dimension



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Urban India is increasingly aspiring to become 'world class,' an ideal largely characterised by glitz, glamour, inequality, and gentrification. City planners and government authorities tend to focus on the perpetuation of elitist models of urbanisation in which the poor and working class, on whose blood, sweat and toil runs the machinery of the city, are denied their human right to an adequate standard of living, which include adequate housing, land and basic services.

Large infrastructure projects, mining, dams, natural resources exploitation, agrarian distress, declining wages and loss of means of subsistence, displace millions from rural areas forcing them to move to cities in hope of livelihood and survival. The space for the poor in urban conglomeration is however shrinking, with the most severe distress being the lack of affordable housing and basic services.

Forced evictions and displacement from homes and lands in both rural and urban areas have become a global phenomenon which has led to dispossession at an unprecedented level. It constitutes a gross violation of human rights and indicates a systematic disregard of internationally recognised and protected human rights on the part of states. Such practices occur due to different reasons. Many purported 'development-based' evictions, which include evictions often planned or conducted with the justification or under the pretext of serving the 'public good,' such as those linked to slum-clearance drives, large-scale infrastructure projects, and land acquisition measures associated with urban renewal, housing renovation, 'city beautification,' mega sporting events like the Commonwealth Games, shopping malls, and roads and highways such as the Yamuna Expressway in Uttar Pradesh.

Evictions and forced land acquisitions are also on the rise due to the reluctance of states in controlling speculation in housing and property. The impact on those affected can often be characterised as a human tragedy; 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. Generally, evictions affect the poorest and the socially and economically marginalised sectors of society, and intensify inequality and social conflict, contributing to segregation and creation of 'apartheid cities.' The increased takeover of farmland is only going to threaten food security in India and further marginalise farmers and sharecroppers.

Most of these 'development-based' land acquisitions have one or several common features that contravene recognised human rights standards. These include: lack of prior notice, inadequate or no consultation, absence of information-sharing, preclusion of participation in the decision-making process for the affected, lack of adequate compensation and rehabilitation, and use of excessive force to carry out evictions.

The forced acquisition of land and eviction of individuals and communities from their homes and habitats is a phenomenon that has reached an unprecedented scale and continues to accelerate across India. The recent protest by farmers in the Aligarh district of Uttar Pradesh is evidence. Farmers have been demanding higher compensation for their land that has been acquired for the Yamuna Expressway, a 165-kilometre road corridor between Noida and Agra.

The government of Uttar Pradesh should engage in democratic dialogue with the farmers and ensure that international human rights standards and the constitutionally guaranteed rights of the farmers are protect-



SHIVANI CHAUDHRY

ed. Farmers and their families must have access to free and prior informed consent and must be adequately consulted in the process. If their consent to move forward with the construction of the Expressway is obtained, they should have a stake in the benefits of the project, and must receive land in compensation for land acquired, of the same or improved quality, and if cash compensation is acceptable, it must be equivalent to not just the current but also potential market value, as recently laid down by Delhi high court. For farmers and cultivators, it is critical that acquired agricultural land is replaced with cultivable and irrigated land that allows them to continue with their agricultural livelihoods. Mere cash compensation is not sufficient for most farmers as they are forced into poverty and often hunger once the cash dries up.

Guidelines regarding adherence to human rights standards, including the need for due process related to evictions, are clearly outlined in the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement. The guidelines categorically state that evictions can only take place in "exceptional circumstances."

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. The guidelines stress that states should adapt, to the maximum of their available resources, appropriate strategies, policies and programmes to ensure effective protection of individuals, groups and communities against land acquisitions and its consequences. Further, they should carry out comprehensive reviews of relevant strategies, policies and programmes, with a view to ensure their compatibility with international human rights norms.

According to the guidelines, urban and rural planning and development processes should involve all those likely to be affected and should include the following elements:

- 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.

- 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.
- A reasonable time period for public review of, comment on, and/or objection to the proposed plan.
- Opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options.
- 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.

The guidelines call for a comprehensive 'eviction impact assessment' to be conducted prior to the decision to move ahead with the project and also emphasise that the government and other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that affected persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: essential food,

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potable water and sanitation, basic shelter; essential medical services; livelihood sources fodder for livestock and access to common property resources previously depended upon; and education for children and child-care facilities.

All affected individuals and groups should have access to appropriate remedies; these include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation. 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 should also be complied with, as far as possible.

While the primary responsibility of protecting and guaranteeing human rights lies with the state, non-state actors such as transnational corporations and other business enterprises must also respect the human right to adequate housing, including the prohibition on forced evictions, within their respective spheres of activity and influence.

With the persistent use of the Land Acquisition Act, 1894, the Indian state has the freedom to acquire land under the nebulous goal of 'public purpose.' Since 'public purpose' has been widely interpreted by the state, the Act continues to be misused for forceful land acquisition from small and marginalised land-owners and farmers, who are seldom consulted or adequately compensated. The

Land Acquisition (Amendment) Bill 2009, currently before Parliament, further serves to dilute the already weak definition of 'public purpose' and strengthens the process of land acquisition by not just the state but also the private corporate sector, and hence needs to be withdrawn immediately. Legal efforts should instead be focused on repealing the archaic 1894 Land Acquisition Act. The fundamental principle of "eminent domain" on which the law is based, as is all land legislation in India, also needs to be challenged and deleted. Moreover, the right to land, which is a pre-requisite to the realisation of other human rights and is essential for the subsistence of millions across the world, needs to be recognised and upheld as a human right. This should also ensure guarantee of legal security of tenure over land and other natural resources for individual and communities.

The continued absence of a human rights-based national rehabilitation policy further exacerbates the crisis of displacement in the country. The Rehabilitation and Resettlement Bill 2009, also before Parliament, while sorely lacking a human rights approach, fails to protect communities against displacement. This makes the need for adhering to international guidelines and standards all the more exigent. It is only when the human rights of all Indians to adequate housing, food, land, water, participation, livelihood, and rehabilitation are recognised and protected that we can achieve development in the real sense of the word. Until then, all ostensible 'development projects' that promote displacement and human rights violations will lead to further impoverishment of the masses. It is the responsibility of the state to ensure that all national laws and policies incorporate the non-negotiable human rights principles of gender equality, non-discrimination, participation, indivisibility of human rights and prior informed consent, and that India complies with its international human rights and environmental legal commitments." ■

*(Miloan Kothari is currently the Executive Director, Housing and Land Rights Network, India; Shivani Chaudhry is Associate Director, Housing and Land Rights Network, India—the views expressed here are personal)*