



United Nations Human Rights Committee: 126th Session

[Geneva, July 2019]

Submission for the Adoption of the List of Issues: INDIA

Introduction

India ratified the International Covenant on Civil and Political Rights (ICCPR) on 10 April 1979. Housing and Land Rights Network India (HLRN)¹ is a New Delhi-based organization that works on promoting the human rights to adequate housing, land, and related rights, especially of the most marginalized. This submission by HLRN presents a list of issues related to violations of several articles of ICCPR that concern the effective implementation and progressive realization of the human rights to adequate housing and land, which are integrally linked to several civil and political rights covered under ICCPR.

Relevant Articles of the Covenant and Related Issues

I. The Rights to Freedom from Discrimination, Equality, and Effective Remedy (Articles 2 and 26)

Issue: Discrimination with Regard to Access to Housing and Land

Certain individuals, groups, and communities are prevented from accessing their rights to adequate housing and land in India, as a result of discrimination on the intersecting axes of income, caste, religion, sex, age, marital status, gender and sexual orientation, and physical ability, among others. The most affected groups include women, Dalits/Scheduled Castes, Scheduled Tribes, transgender persons, religious minorities, migrants, internally displaced persons, persons with disabilities, and homeless and landless persons.

Incidents of segregation and discrimination by housing societies and property-owners on the grounds of religion and caste are common in many Indian cities. According to a study by the Indian Council of Social Science Research,² while both Dalits and Muslims face 'housing apartheid' in Delhi, Muslims experience greater discrimination. For those who are able to access housing on rent, the terms and conditions are more difficult. Another study carried out in 2016 revealed that Muslims and people belonging to Scheduled Castes face more difficulty in finding rental accommodation in Delhi and attributed it to the deeply-rooted stigma faced by these

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² 'Urban Rental Housing Market: Caste and Religion Matters in Access,' *Economic and Political Weekly*, June 2015.

groups. The study also pointed out that the burgeoning online rental housing market in India may facilitate discrimination by eliminating the necessity for face-to-face interaction.³

In rural India, as per the Socio-economic Caste Census 2011, only 17.69 per cent of Scheduled Castes and 10.5 per cent of Scheduled Tribes own a house, whereas only 9.23 per cent of Scheduled Castes and 13.06 per cent of Scheduled Tribes own land.⁴ Muslims, who constitute 11.06 per cent of total households in India, own only 5.37 per cent of land across the country.⁵

According to the 2014 report of the high-level committee (Xaxa Committee) on the status of tribals in India, armed conflict affects tribal habitations spanning from central to northeast India. Conflicts in the northeast resulting from land alienation, influx of outsiders, and the struggle for natural resources, have resulted in widespread displacement.⁶ Moreover, Scheduled Castes/Dalits and Scheduled Tribes/indigenous peoples together constitute almost 80 per cent of the more than 60 million people displaced by mining and industrial development projects since India's independence (1947).⁷

Despite progressive jurisprudence recognizing their rights and identity, persons who identify as LGBTQI, especially transgender persons, face severe challenges in accessing housing and land in India due to societal prejudices, which often manifest as different forms of violence and harassment.

While a few government housing schemes include provisions for some marginalized groups, (for example, the Pradhan Mantri Awas Yojana (PMAY) or Housing for All – 2022 scheme includes provisions for persons with disabilities), most housing-related laws and policies do not provide protection against discrimination of marginalized groups or address the intersecting factors that impede their access to housing and land and the consequent realization of multiple human rights.

Suggested Questions:

1. Please provide information on measures being taken by India to address discrimination against, and to ensure equal access to housing and land for, Scheduled Castes/Dalits, Scheduled Tribes, religious minorities, including Muslims, LGBTQI persons, and other discriminated communities.
2. Please provide information on investigation/arrest, including use of relevant national laws (such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989) against persons responsible for perpetuating discrimination against the above-mentioned groups and communities.

Recommendations:

1. Urgently take measures to ensure that the human rights to adequate housing and land are guaranteed to all citizens of India, irrespective of religion, caste, ethnicity, age, location,

³ 'For whom does the phone (not) ring? Discrimination in the rental housing market in Delhi, India,' WIDER Working Paper 2016/55, May 2016. Available at: <https://www.wider.unu.edu/sites/default/files/wp2016-55.pdf>

⁴ Socio-economic Caste Census, 2011. Available at <http://secc.gov.in/reportlistContent>

⁵ *India Exclusion Report 2016*, Centre for Equity Studies, New Delhi, 2017.

⁶ Report of the High Level Committee on Socio-economic, Health and Educational Status of Tribal Communities of India, Ministry of Tribal Affairs, Government of India, May 2014. Available at: <http://www.indiaenvironmentportal.org.in/files/file/Tribal%20Committee%20Report,%20May-June%202014.pdf>

⁷ *No Escape from Discrimination: Minorities, Indigenous Peoples and the Crisis of Displacement*, Minority Rights Group International, December 2017. Available at: http://minorityrights.org/wp-content/uploads/2017/12/MRG_Displacement_Report_Dec17.pdf

- property and tenure status, sex, marital status, disability, and gender and sexual orientation.
2. Ensure that national and state laws to counter discrimination are adequately implemented and that any existing discriminatory provisions in laws and policies are removed.

Issue: Lack of Access to Justice for Violations of the Rights to Adequate Housing and Land

Victims of forced evictions and other housing and land rights violations in India generally have limited access to remedy and justice.

The majority of evicted and displaced persons in India do not have access to justice; neither is their right to effective remedy protected or fulfilled. In most cases, affected persons are left to fend for themselves with limited recourse to relief and redress. Most state grievance redress mechanisms do not address issues related to forced evictions and displacement. As the urban and rural landless and homeless are generally perceived as “encroachers/illegal” residents by the state and its law-enforcement authorities, their pleas for justice are often ignored. Where they are able to generate resources or are supported by institutions working on housing and land rights issues, they may approach courts or national human rights institutions for relief.

Several laws and policies in India lay down procedural safeguards such as the provision of adequate notice and public hearing, to protect security of tenure over housing and land and to prevent forced evictions.⁸ While the Indian judiciary has upheld the right to housing as an essential component of the right to life in several judgments, in some other cases, Indian courts have ordered evictions and also held that the provision of alternative accommodation is not a prerequisite for evictions. For example, in *Peoples’ Union for Civil Liberties v. State of Gujarat*,⁹ despite certain positive mandates, the High Court of Gujarat suggested that providing alternative accommodation may in fact encourage “encroachers” and hence, it would not be mandatory for the government to provide the same.¹⁰

In 2017, court orders and their interpretation by state authorities were responsible for 17 per cent of the total evictions documented in India by HLRN¹¹ whereas in 2018, court orders accounted for about 10 per cent of the total incidents of eviction, affecting over 18,100 persons across the country.

Suggested Question:

1. Please provide information on measures to improve access to justice and fulfil the right to remedy of victims of forced evictions, displacement, and other housing and land rights violations.

⁸ These include, *inter alia*: National Rehabilitation and Resettlement Policy 2007. Available at: <http://dolr.gov.in/sites/default/files/national%20rehabilitation%20%26%20resettlement%20policy%2c%202007.pdf>; and The Public Premises (Eviction of Unauthorised Occupants) Act 1971. Available at: <http://www.legislative.gov.in/Actsofparliamentfromtheyear/Public-Premises-Eviction-Unauthorised-Occupants-Act-1971>

⁹ (2001) 1 GLR 547.

¹⁰ For more information see, *Adjudicating the Human Right to Adequate Housing: Analysis of Important Judgments from Indian High Courts*, Housing and Land Rights Network, New Delhi, 2019. Available at: https://www.hlrn.org.in/documents/Housing_Judgments_India.pdf

¹¹ See, *Forced Evictions in India in 2017: An Alarming National Crisis*, Housing and Land Rights Network, New Delhi, 2018. Available at: http://hlrn.org.in/documents/Forced_Evictions_2017.pdf
Forced Evictions in India in 2018: An Unabating National Crisis, Housing and Land Rights Network, New Delhi, 2019. Available at: http://hlrn.org.in/documents/Forced_Evictions_2018.pdf

Recommendation:

1. Implement progressive judgments and laws related to promoting access to justice for the rights to housing and land.

II. The Right to Life (Article 6)

General Comment No. 36 (2018) on Article 6 of the Covenant emphasizes in paragraph 26 that: “The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include... degradation of the environment, deprivation of land, territories and resources of indigenous peoples... The measures called for addressing adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation...”

Issue: Loss of Life During and in the Aftermath of Forced Evictions

Lives are lost both during the act of forced eviction, when accompanied by violence and force, and in the aftermath of evictions and home demolitions when people are forced to live in inadequate conditions, in the absence of resettlement or the provision of alternative accommodation.

Several people die after losing their homes and being forced to live in inadequate conditions in extreme weather conditions. Those who are already suffering from chronic or acute health issues face increased morbidity and thus succumb to their illnesses much sooner. Such loss of life is seldom documented and the link between the eviction and increased mortality of affected persons is generally denied by state authorities, who avert any form of accountability. Children, older persons, persons with disabilities, pregnant women, and those living with mental illness are among the most vulnerable.

Issue: Loss of Life of Homeless Persons Living in Grossly Inadequate Conditions

Homelessness is a gross violation of human rights, including the right to life, the right to liberty and security of the person, the right to non-discrimination, and the rights to freedom of expression and association. Civil society and independent experts estimate that over 3 million people in India are homeless.

Persons living without a secure home are especially vulnerable to attacks of violence that threaten their security of the person and also their right to life.

Human rights experts working on homelessness in India estimate that about 60–70 per cent of all ‘unidentified deaths’ in Indian cities are of homeless persons. Using data from the Zonal Integrated Police Network (ZIPNet)¹² on ‘unidentified dead bodies’ found in Delhi between January 2008 and 31 December 2018, HLRN has calculated that at least 22,756 homeless persons (65 per cent of the total unidentified dead bodies) died in Delhi in the last ten years from a multitude of causes: undiagnosed health issues; infectious diseases; chronic ailments; cold, heat, and rain; violence; road accidents; and, drug overdose. This amounts to an average of six persons dying every day, but does not include deaths of homeless persons living with families.

¹² Zonal Integrated Police Network: www.zipnet.in

Living out in the open in extreme weather conditions as well as the lack of adequate food and access to healthcare contribute to increasing the mortality and morbidity of homeless persons. No investigation is ever conducted into the cause of the death of a homeless person, and neither is anyone held responsible.

Suggested Questions:

1. Please provide information on the annual number of deaths of homeless persons, disaggregated by gender, age, and cause of death.
2. Please provide information on steps being taken by the State party to reduce the incidence of deaths among homeless persons.
3. Please provide information on measures being taken to prevent forced evictions and resulting human rights violations, including loss of life.

Recommendations:

1. Ensure that disaggregated data is regularly collected on deaths of homeless and evicted/displaced persons, including on the cause of death.
2. Ensure that state accountability is provided and that local officials are held responsible for the death of homeless persons in their area of jurisdiction/administration.

III. Gender Equality and Violence against Women (Articles 3 and 17)

Homelessness, forced evictions, displacement, and inadequate resettlement, including the resultant inadequate living conditions, most severely impact women.

There is a direct link between forced evictions and violence against women and girls. Loss of housing and resulting homelessness renders women and girls vulnerable to multiple forms of sexual abuse and gender-based violence.

Homeless women, in particular, suffer from extreme violence and sexual assault. Instances of rape, molestation, and trafficking, are common among homeless women. In most cases, affected women do not have access to remedy and relief. Accessing healthcare is also a tremendous challenge for homeless women.¹³ Incidents of homeless women giving birth on streets and also dying during childbirth have been reported, including in the nation's capital city of Delhi. According to the National Report on the Status of Shelters for Urban Homeless 2014, most states in India do not have shelters dedicated for women, resulting in frequent sexual harassment and molestation not only by strangers and other homeless men but also by shelter caretakers and the police.¹⁴

Women who are forcefully relocated to remote sites on city peripheries witness loss of livelihoods and education, as well as increased insecurity and violence. As most of these sites lack security, street lighting, safe access roads, and transport, women suffer from increased acts of violence, including sexual abuse and trafficking. In certain instances, early marriage of girls has been reported in resettlement sites, as parents fear for their daughters' safety and thus choose to get them married.

¹³ See, Chaudhry, S., A. Joseph, and I.P. Singh. *Violence and Violations: The Reality of Homeless Women in India*, March 2014, New Delhi. Available at:

http://hlnr.org.in/documents/Violence_and_Violations_Homeless_Women_in_India_2014.pdf

¹⁴ National Report on the Status of Shelters for Urban Homeless, Supreme Court Commissioners' Office, August 2014. Available at:

<http://www.ihnr.org.in/files/editor/National%20Report%20on%20the%20Status%20of%20Shelters%20for%20Urban%20Homeless%20-%202014.pdf>

Land and property ownership of women is inextricably linked to their freedom from gender-based violence. However, the distribution of land between the male and female population in India is skewed to the extent that only 7.17 per cent of women have a share in the total productive land across India.¹⁵ The percentage of female-headed households owning a house is limited to only 12.13 per cent in rural areas¹⁶ and 8.9 per cent in urban areas.¹⁷ The minimal percentage of land ownership ensures that women, who constitute approximately 65 per cent of agricultural workers and 74 per cent of the rural workforce, are not recognized as ‘farmers’ and are thus not able to access several existing schemes.¹⁸

While single women constitute 12 per cent of India’s female population, they experience several taboos and challenges while accessing housing/land, including with regard to rental housing.

Suggested Questions:

1. Please provide information on measures taken to prevent and to address violence against women, including homeless women, and to promote women’s rights to housing and land.
2. Please provide data on housing and land ownership by women across India.

Recommendations:

1. Effectively implement laws that promote women’s rights to adequate housing, property, land, and inheritance. Remove provisions in laws and policies that impede the full realization of women’s human rights.
2. Ensure that all government schemes and land redistribution programmes allot land and housing in the names of women and provide them with legal security of tenure.

IV. The Rights to Liberty, Security, Freedom of Movement and Residence, Political Participation, and Protection from Arbitrary or Unlawful Interference with Privacy, Family, and Home (Articles 7, 9, 12, 17, and 25)

Issue: Forced Evictions and Arbitrary Demolition of Homes without Due Process

The continued practice and legal sanction of forced evictions and demolitions by the Indian state, violates India’s constitutional and international legal obligations. Though forced evictions and displacement across India continue to rise and have assumed alarming proportions, this serious national crisis is not documented or being addressed.

Through its ‘National Eviction and Displacement Observatory,’ HLRN has documented that in the years 2017 and 2018, Indian government authorities, at both the central and state levels, demolished more than 95,400 homes, leading to the forced eviction of almost half a million people (over 462,000 people) across urban and rural India. The majority of the affected persons have not been resettled by the state and continue to live in extremely inadequate conditions characterized by high insecurity, lack of access to basic services, precarity, and fear. Furthermore, data compiled by HLRN also reveals that at least 11.3 million people across India live under the threat of eviction and potential displacement.

¹⁵ *India Exclusion Report 2016*, Centre for Equity Studies, New Delhi, 2017.

¹⁶ Socio-economic Caste Census 2011. Available at <http://secc.gov.in/reportlistContent>

¹⁷ Census of India 2011.

¹⁸ ‘Above all, owning property gives abused women the option to leave,’ *The Wire*, 8 March 2018. Available at: <https://thewire.in/gender/women-property-rights-womens-day>

In most of the cases of eviction and home demolition, affected persons and communities were not provided any notice or adequate time to remove their belongings from their homes before the demolition commenced. For example, 583 homes were demolished for the restoration of Korattur Lake, Chennai in 2018 without any prior notice leaving families scrambling for their possessions amidst the rubble after the demolition. In many of the reported cases, authorities do not have a legal basis for the eviction, nor do they provide a justifiable reason to people before forcing them out of their homes and razing structures to the ground.

The use of force and assistance of the police is common in incidents of forced evictions. For instance, during the demolition of over 80 houses in Purana Usmanpur, Delhi, several people were injured when officials used force to evict residents.

Although the Supreme Court of India, in S.L.P. (C) 30026–30027/2018, had declared that protocol must be followed before an eviction, including issuance of adequate notice and opportunity to be heard, these requirements are frequently ignored in practice.

In the overwhelming majority of cases, the state does not provide rehabilitation and resettlement to affected persons. Most evicted and displaced persons have to fend for themselves and either rebuild their own homes at their own cost, seek rental housing, or are rendered homeless due to the absence of affordable alternative housing. In over 98 per cent of the cases of forced eviction documented by HLRN in 2018, affected persons were not provided any monetary compensation for the losses suffered by them.

In the few instances that evicted persons are resettled, the relocation sites are generally situated on the peripheries of cities and are characterized by highly inadequate housing and living conditions. For example, persons evicted from the Tansa Pipeline in Mumbai were relocated to Mahul, a site declared as a “Critically Polluted Area” by the National Green Tribunal. Residents have reported adverse health impacts, including tuberculosis, asthma, skin rashes, and, in a few cases, cancer. At least 100 persons living at the site have died.¹⁹

In many cases, during the demolition process, affected persons lose vital documents, including voter cards, and thus lose their right to vote. Getting alternative documents is generally a cumbersome and, often, expensive procedure and results in affected persons being denied several entitlements, including under state schemes.

Forced evictions also violate the human right to security of the person and home, and increase vulnerability of evicted/displaced persons, in particular of women and children, to a range of violations.

Suggested Questions:

1. Please provide disaggregated data on forced evictions, displacement, and demolition of homes across India in the last twenty years.
2. Please provide details on the number of people who have been resettled and rehabilitated and the conditions of the resettlement sites.
3. Please provide information on measures undertaken by the State party to:
 - (i) Investigate incidents of forced evictions, including use of force during the process of eviction/home demolition;

¹⁹ ‘Life and death in Mumbai’s human dumping ground,’ *Mint*, 28 September 2018. Available at: <https://www.livemint.com/Leisure/Ki7VXzsgdtebWpHmXQPuMI/Life-and-death-in-Mumbais-human-dumping-ground.html>

- (ii) Ensure adequate safeguards and effective participation in order to avoid forced evictions; and,
- (iii) Ensure the provision of alternative housing and adequate resettlement and restitution of human rights.

Recommendations:

1. Impose a national moratorium on forced evictions, as also recommended by the Special Rapporteur on Adequate Housing in her mission to India report [A/HRC/34/51/Add.1].
2. Ensure that relocation takes place only under “exceptional circumstances” and complies with international human rights standards, including the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement [A/HRC/4/18].
3. Investigate all cases of forced eviction and bring perpetrators to justice, and ensure access to justice and restitution of rights of all affected persons.

Issue: Homelessness

As mentioned above, the issue of homelessness violates multiple human rights of affected persons. The lack of housing and the state of living in precarious locales without security increases the vulnerability of homeless persons to violence, including gender-based violence, chronic and acute illnesses, arbitrary arrest, sexual abuse, discrimination, and death. Furthermore, anti-vagrancy laws such as the Bombay Prevention of Begging Act 1959 criminalize the homeless and destitute, often resulting in their arbitrary detention and denial of the right to effective remedy and access to justice.

People living in homelessness also experience extreme violations of their rights to privacy, security of the person, freedom of expression, association, and political participation. The absence of a permanent address often denies them identity documents, which further impedes their ability to access state schemes and entitlements, and violates their right to vote.

In 2010, the Supreme Court of India ordered that shelters must be sufficient to meet the needs of the homeless population, in the ratio of at least one shelter per 100,000 population, in every major urban centre.²⁰ It also stated that shelters should be functional throughout the year and not as a seasonal facility only during the winters. Despite strong orders from the Supreme Court, the situation in most cities across India is abysmal with regard to provisions for the homeless. Currently, the issue of national homelessness is being reviewed by the Supreme Court in another public interest litigation case.²¹ The National Urban Livelihoods Mission – Scheme of Shelters for Urban Homeless (NULM-SUH) provided policy direction to the Supreme Court’s orders on homelessness. However, it is not being implemented adequately in all states of the country. There is also an acute shortage of shelters for women, families, women with children, working men, and shelters for people with special needs such as older persons, persons with disabilities, persons living with mental illness or HIV/AIDS, and chemically-dependent persons. The majority of the homeless in India are, thus, left to fend for themselves and suffer from harsh weather and climate conditions.

Suggested Questions:

1. Please provide disaggregated data on the number of homeless persons in India according to gender, age, and location.

²⁰ *PUCL v. Union of India and Others*, W. P. (C) 196/2001.

²¹ *E. R. Kumar and Anr. v. Union of India and Ors.*, W.P. (C) 55/2003.

2. Please provide information on measures taken to provide durable solutions, including access to permanent housing, for homeless persons across the country.

Recommendations:

1. Ensure priority allotment of housing under all state schemes for homeless and destitute persons, and improve access to basic services, including the provision of free medical aid and access to healthcare for all homeless persons.
2. Develop a comprehensive policy for children living in street situations.
3. End homelessness by 2030, in keeping with India's Sustainable Development Goal commitments, as also recommended by the Special Rapporteur on Adequate Housing [A/HRC/34/51/Add.1].
4. Implement recommendations, including those related to housing and homelessness, received by India during its third Universal Periodic Review [A/HRC/36/10].

Issue: Human Rights Defenders

Individuals who defend human rights related to land, territory, housing, and the environment are often targeted by the state as well as non-state actors and subjected to violence, defamation, sexual harassment, intimidation, arbitrary arrests, and illegal detention. In 2017, India was recognized as one of the deadliest countries for land rights defenders.²²

Suggested Questions:

1. Please provide information on efforts taken by the state to investigate crimes against housing and land rights defenders.
2. Please provide information on measures taken to develop a law to protect human rights defenders in India.

Recommendation:

1. Ensure the promulgation of a comprehensive human rights-based national law to protect human rights defenders, including those defending housing, land, and the environment.

Conclusion

The acts of forced eviction and home demolitions as well as inadequate living conditions of the urban and rural poor in India violate multiple civil and political rights, and need to be addressed using the 'indivisibility of human rights' approach, as has also been reflected in several General Comments and Concluding Observations of the Human Rights Committee.

²² *Deadly but Preventable Attacks: Killings and Enforced Disappearances of Those Who Defend Human Rights*, Amnesty International, London, 2017. Available at: <https://www.amnestyusa.org/wp-content/uploads/2017/12/Killings-and-ED-of-HRDs-report-4-Dec-RS.pdf>



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