Right to Adequate Housing

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

The Human Rights Council, under the Universal Periodic Review (UPR), examined India's human rights record in 2008 (UPR I) and 2012 (UPR II). In both UPR I and II, only one recommendation was made to India on housing. However, several recommendations relate to reducing poverty and inequality, eliminating discrimination, promoting gender equality, and improving living conditions, which encompass the human right to adequate housing.

NATIONAL LEGAL FRAMEWORK

Thirty-one per cent of India's population (377 million people) lives in urban areas while 69 per cent (833 million) is rural. India has the world's largest number of people (632 million) living in multidimensional poverty. Since 'housing' is considered a state subject in India, most laws related to it are dealt with by state governments. The central government, however, regularly introduces policies and schemes related to different dimensions of housing. Principal among them is the Pradhan Mantri Awas Yojana (PMAY/Housing for All–2022), which aims to construct 20 million houses in urban and 30 million houses in rural areas by 2022. The Atal Mission for Renewal and Urban Transformation (AMRUT) and the Smart Cities Mission (SCM) include affordable housing components, though they are not as clearly defined. The Real Estate (Regulation and Development) Act 2016 aims to protect the rights of buyers and establish regulatory frameworks for builders/real estate companies, while the National Urban Livelihoods Mission – Scheme of Shelters for Urban Homeless (NULM–SUH) contains standards for shelters and facilities for the homeless across India.

CHALLENGES

ISSUES AND IMPACTS

Failure to uphold housing as a human right

The lack of a human rights approach to housing exacerbates the housing crisis. Though several housing policies exist, they do not focus on the progressive realization of the human right to adequate housing. This creates contradictions between state priorities and often results in violators enjoying impunity, especially in cases of eviction.

Lack of public, low-cost/social housing and neoliberal economic policies

In 2012, the national urban housing shortage was 18.78 million houses; 95 per cent for economically weaker sections (EWS) and low-income groups (LIG). This is projected to increase to 34 million units by 2022. Census 2011 reported that 13.75 million households (65–70 million people) lived in underserviced, low-quality housing in settlements referred to as 'slums.' The macroeconomic framework promotes commercial development of housing for the rich, often at the expense of investment in housing for EWS/LIG. The recent focus on 'affordable housing' in the Union Budget 2017–18 and increase in allocations for PMAY are welcomed; however, these measures are not sufficient to ensure adequate housing for the homeless and EWS/LIG.

Real estate speculation

Rampant speculation has made housing unaffordable for the majority. Families unable to afford a house could reach 38 million by 2030. Census 2011 recorded 11.09 million vacant houses in urban areas, purchased mostly for speculative purposes. The Real Estate Act 2016 is a positive development but there is no guarantee that its implementation will also control speculation.

Lack of security of tenure and laws regulating the same

Most low-income households do not enjoy security of tenure over housing/land even though they may have lived in a settlement for decades. This increases their vulnerability to eviction and often precludes adequate investment in housing. State rent control laws could be diluted through the Draft Model Tenancy Act. The government is drafting a National Urban Rental Housing Policy; its focus should be on social rental housing for EWS/LIG.

Over-reliance on the market/private sector

Government housing schemes largely rely on the private sector to deliver. While the commitment to provide 'housing for all' is commendable, it is estimated that 90 per cent of funds for the scheme would need to be generated from the private sector. India has allocated Rs 480 billion (USD 7.5 billion) for the Smart Cities Mission, which aims to develop 100 'smart cities' by 2020. States have to generate half the funds from public-private partnerships (PPP). An analysis of the 60 shortlisted Smart City Proposals reveals a lack of priority for EWS/LIG housing. In some cities, SCM is promoting evictions.

Growing homelessness

India has the world's largest number of homeless persons. Census 2011 recorded 1.77 million homeless persons; about 0.94 million in urban areas and 0.83 million in rural areas. Independent experts, however, estimate the homeless population to be over three million. Though court interventions have resulted in some positive developments, homeless shelters in most cities are still insufficient, inadequate, and do not meet NULM–SUH standards. Homeless women and girls live in extreme insecurity and suffer the worst kinds of violence. Anti-begging/anti-vagrancy laws operational across India criminalize the homeless and poor. Schemes to address rural homelessness are absent. Though 18 million poor agricultural labourer families lack a house site, they are not counted as homeless.

Forced evictions, generally without due process or adherence to human rights standards

Government and private forces, often in collusion, demolish low-income settlements and evict residents under the garb of 'urban renewal', 'resettlement', and 'slum-free city' schemes. The large majority of evictions are not carried out for a genuine 'public purpose.' Data compiled by Housing and Land Rights Network, Delhi reveals that in 2015 and 2016, over 160,000 people in urban areas were evicted from their homes in urban India. These evictions have resulted in the loss of livelihoods, education, housing, health, security, access to basic services and income.

CHALLENGES

ISSUES AND IMPACTS

Project-induced displacement from dams, ports, roads, power, irrigation, and mining projects	India has the world's highest number of people displaced from ostensible 'development' projects – over 70 million since its independence (1947). The Standing Committee on Rural Development (2011-12) reported that, "Only a third of displaced persons of planned development have been resettled."
Failed resettlement	In most cases of eviction and displacement, the government does not provide rehabilitation to affected persons on grounds that they are 'ineligible.' Many states have a 'cut-off' date before which the individual/family should have been living in the city in order to be considered 'eligible' for resettlement. For the small minority considered 'eligible,' the government provides alternative plots or flats, generally in undeveloped locales on city peripheries. Residents of most resettlement sites report tenure insecurity; inadequate housing; absence of basic services; lack of safety for women and children; and loss of education, livelihoods, income, and health.
High frequency of disasters, and the absence of a human rights approach to disaster management	Between 2008 and 2014, India recorded the third largest number of people displaced from natural disasters in the world (30 million). Though large amounts of funds are announced for relief, in most cases the compensation paid is insufficient and/or late. Disasters are sometimes used to forcefully relocate the poor to city outskirts, as in the case of tsunami and flood-affected families in Chennai. The Madras High Court has ordered the eviction of 55,000 "encroachments" (houses of EWS) along Adyar River, Cooum River, and Buckingham Canal in Chennai, as part of Tamil Nadu's disaster management plan.

RECOMMENDATIONS

Promulgate and implement a national law on the human right to adequate housing, which includes commitments to ending homelessness and forced evictions and ensures security of tenure.

Revise macroeconomic policies to prevent privatization of basic services. Restrict foreign investment and PPP in housing. Regulate market forces to prevent evictions, segregation, and speculation. Implement the Real Estate (Regulation and Development) Act 2016, within a human rights framework.

Adequately define 'affordable housing' based on income, and ensure that budgetary allocations are monitored to ensure that the most disadvantaged/needy persons and groups are able to access adequate housing. PMAY targets cannot be met unless demolition of EWS/LIG homes stops.

Address structural causes of homelessness. Create adequate shelters, short-stay homes, and recovery facilities for the homeless, especially women, children, older persons, and chemical-dependent persons, based on NULM–SUH. Allocate houses to homeless persons with mental illness/persons with mental illness at risk of homelessness.

Repeal all anti-begging/anti-vagrancy laws. Organize consultations on, finalize, and pass the Persons in Destitution (Protection, Care and Rehabilitation) Model Bill 2016.

Amend laws/policies to address housing and other needs of persons with disabilities. Ensure that the Building Bye-laws 2016 protect their rights.

Ensure that 'smart cities' do not promote evictions, segregation, and forced relocation.

Ensure the free and prior informed consent of affected persons before any redevelopment, upgrading, land acquisition or relocation project is finalized.

Implement UN standards and guidelines on housing, resettlement, evictions, and internal displacement, and recommendations of Special Procedures and treaty bodies.

Implement court orders that uphold the right to housing.

Develop better coordination between government ministries working on urban and rural housing and with national human rights institutions (NHRIs) (UPR II 138.58). NHRIs should independently investigate violations and take action towards reparation.

Collect disaggregated data (UPR II 138.71) on housing ownership, evictions, and displacement, especially with regard to gender.

Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (UPR II 138.18).

(Also see, Report of the Special Rapporteur on adequate housing, Mission to India, A/HRC/34/51/Add.1, January 2017)

REFERENCES

Census of India 2011, Ministry of Home Affairs, Government of India.

'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.

India Submission to the UN Human Rights Council for India's Second Universal Periodic Review, National

Human Rights Commission, 2012.

'Forced to the Fringes: Disasters of 'Resettlement' in India,' Housing and Land Rights Network, New Delhi, 2014.

'Human Development Report 2014,' United Nations Development Programme, New York, 2014.

'White Paper on Indian Housing Industry,' RNCOS, 2015.

'The Human Rights to Adequate Housing and Land: Joint Stakeholders' Report for India's Third

Universal Periodic Review,' Housing and Land Rights Network, New Delhi, 2016.

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