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THE GLOBAL CRISIS OF DISPLACEMENT AND EVICTIONS

A Housing and Land Rights Response

By Miloon Kothari

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The Rosa Luxemburg Foundation is an internationally operating, progressive non-profit institution for civic education. In cooperation with many organizations around the globe, it works on democratic and social participation, empowerment of disadvantaged groups, alternatives for economic and social development, and peaceful conflict resolution.

The New York Office serves two major tasks: to work around issues concerning the United Nations and to engage in dialogue with North American progressives in universities, unions, social movements, and politics.

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Fighting Displacement

The world is living through an unprecedented housing crisis. Approximately 1.6 billion people are considered to be inadequately housed, while one hundred million are homeless and another sixty million have been displaced from their homes.

Unless something is done about it, the rapid urbanization of the world's population is nearly certain to exacerbate these figures. This crisis is multi-faceted, including issues ranging from forced evictions to displacement to gentrification; from the mortgage crisis to the austerity-driven decline in public housing to the exponential growth of slums. The worldwide housing crisis is being precipitated by war and destruction; by natural disasters and climate change; by misguided and capital-driven development. But most of all, it is being driven by a neoliberal model that treats housing as a commodity instead of as a fundamental right of all humans living on this planet.

The United Nations as well as other international organizations and civil society bodies have in various ways sought to bring attention to this issue and provide tools to assist other organizations, state actors, and non-state movement groups in helping to stem the rising tides of the housing crisis. International organizations are invaluable in establishing normative human rights frameworks and putting pressure on those who are violating people's housing rights. The question is what exactly they are doing, how they can be most effective, and where they fall short in their fights to halt the housing crisis.

In this study Miloon Kothari, the first appointed United Nation's Special Rapporteur on Adequate Housing, reports on the global housing and land crisis and the many human rights violations that it constitutes. He focuses particularly on forced evictions and other forms of displacement caused by war, persecution, and disasters both natural and man-made—for instance those driven by misguided or ill-intentioned development policies.

As UN Special Rapporteur, as well as founder and former director of Habitat International Coalition's Housing and Land Rights Network, Kothari has played an important role in shaping UN responses in the form of global standards on housing rights, displacement and evictions. In his study he gives insights into the UN approach to the housing and land rights crisis and critically discusses to what extent these standards are currently being implemented on the national and local levels. Kothari concludes with recommendations on how to curb the power of state and corporate actors to expropriate land, and how to better protect people from homelessness, displacement, and other forms of inadequate housing.

Housing justice and urban politics represent a core area of our work at the Rosa Luxemburg Stiftung's New York office. This study is the second in our "City Series" and marks both a continuation and a deepening of our commitment to this urgent political topic.

*Stefanie Ehmsen and Albert Scharenberg
Co-Directors of New York Office, December 2015*

The Global Crisis of Displacement and Evictions

A Housing and Land Rights Response

By Miloon Kothari

The world today is facing an unprecedented housing and land rights crisis. National governments and the international community appear unwilling to directly confront the root causes of this crisis. As if this were not enough of a challenge, the world is now hurtling towards a level of massive urbanisation that will soon dwarf the already-colossal scale of 1.6 billion people inadequately housed and over one hundred million homeless.

The basic obstacles that block progress on realising housing and land rights for the world's most marginalised people are numerous. In addition to armed and ethnic conflict and disasters, there is a range of structural obstacles: political and administrative neglect; legal barriers; policy formulation and governance that lacks the indivisibility of a human rights approach; contradictory economic and social policies making it so that housing subsidies meant for lower-income groups can never keep up with the rise in housing and rental levels; unplanned urbanisation, and so forth.

These obstacles directly impact on a range of conditions that qualify as a denial of housing and land rights: lack of access to water and sanitation; insufficient livelihood opportunities within proximate range of one's home; density; environmental conditions; and the absence of affordable housing stock.

Perhaps the most pernicious and overarching of the structural obstacles noted above is

the persistence of economic policies that are steeped in the neoliberal framework. These policies have promoted unbridled speculation on land and property, placing housing out of reach for much of the world's population. This approach successfully argues against state intervention in the market to halt speculation of property and land. Such an approach tolerates and in fact encourages the growth of private-sector real estate entities whose main purpose of existence is to seek profits through land and property speculation. Such an approach also argues against the state taking direct responsibility to house lower-income groups (through the building of social housing, for example). Such an approach seeks to perpetuate itself by claiming—with no historical evidence and built on a morally bankrupt neoliberal ideology—that opening up the housing and property spheres to the private sector will create trickle-down opportunities to house the poor.

These structural obstacles to the realisation of the right to adequate housing—around which development policies have often been designed—have also led to a phenomenon in which millions of people are actually displaced from their homes as a result of so-called development. This is in addition to the millions of people who are annually displaced due to armed and ethnic conflict and disasters. A robust and sustained local, national, and global response is urgently required to grapple with these twin crises.

Through global and regional data, this study seeks to present the scale of the housing crisis, illustrated by the great number of people living in slums across the world. The study goes on to briefly explain the human rights impacts of development-based displacement and the response that has emerged from UN human rights bodies in the form of global standards like the UN Basic Principles and

Guidelines on Development-based Displacement and Evictions. The study then concludes with examples of the myriad uses of these guidelines and the imperative to develop and implement housing and land rights at the local level. Only such an approach will assist in stabilising the lives of millions of the world's citizens who currently face an uncertain and bleak future.

The Housing and Land Rights Crisis

A statistical overview of the global housing crisis is presented in graphic 1. The focus of these details, globally and regionally, is to capture the enormity of the housing crisis represented by the portion of the world's population that is living in the worst possible housing conditions: in slums. While Sub-Saharan Africa has the highest proportion of its population living in slums, South Asia and East Asia follow closely behind when measured in sheer numbers. Based on the findings of a UN Habitat study, the graphic shows an increase of 30 percent in the world's slum population since 1990. Such stark numbers, and the colossal human rights violations that they indicate, serve as a graphic rejoinder to the policymakers at national and international levels who claim that there has been a significant improvement in the past decades in lifting people out of poverty.

- ⇒ 1.6 billion people are inadequately housed worldwide.¹
- ⇒ 100 million people are homeless (20-40 million in cities), many because of forced evictions.
- ⇒ In Sub-Saharan Africa more than 60 percent of urban dwellers live in slums.² The

region has a slum population of 199.5 million, representing 61.7 percent of its urban population.

- ⇒ This is followed by South Asia with 190.7 million in slums, making up 35 percent of urban residents; East Asia with 189.6 million (28.2 percent); Latin America and the Caribbean with 110.7 million (23.5 percent); Southeast Asia with 88.9 million (31 percent); West Asia with 35 million (24.6 percent); North Africa with 11.8 million (13.3 percent); and Oceania with six million, constituting 24.1 percent of the urban population.³
- ⇒ In 2014, "UN Habitat states that the number of people living in slum conditions is now estimated at 863 million, in contrast to 760 million in 2000 and 650 million in 1990."⁴
- ⇒ Up to one quarter of the world's population is estimated to be landless (200 million in rural areas).⁵
- ⇒ In India, 43 percent of rural households are considered "absolute landless" and "near landless" (those with less than ½ acre of land).

1 Habitat for Humanity, World Habitat Day 2015 key housing facts, www.habitat.org.

2 Cordaid, UN Habitat: Number of Slum Dwellers Grows

to 863 Millions, www.cordaid.org.

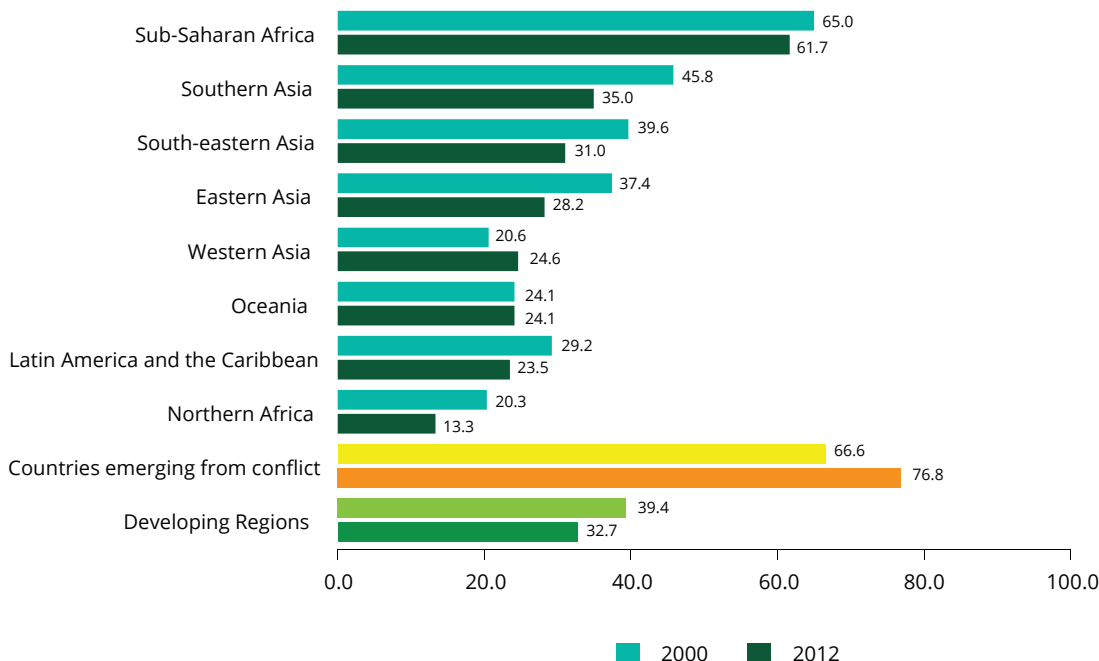
3 United Nations, Resources for Speakers on Global Issues, www.un.org.

4 Cordaid, op. cit.

5 Reset, Land and Conflict, en.reset.org.

Graphic 1: Proportion of Urban Population Living in Slums, 2000 and 2012 (percentage)

Source: UN-Habitat, Global Urban Indicators Database 2013



Note: Countries emerging from conflicts included in the aggregate figures are; Angola, Cambodia, Central Africa Republic, Chad, Democratic Republic of the Congo, Guinea-Bissau, Iraq, Lao People's Democratic Republic, Lebanon, Mozambique, Sierra Leone, Somalia and Sudan

- ⇒ In 2010, the population of the developing world was more rural than urban: some 3.1 billion people lived in rural areas.
- ⇒ About one in four people live in conditions that harm their health, safety, prosperity, and opportunities.
- ⇒ By 2030, an additional three billion people (about 40 percent of the world's population) are expected to need access to housing. This translates to a demand for 96,150 new affordable units every day and 4,000 every hour.

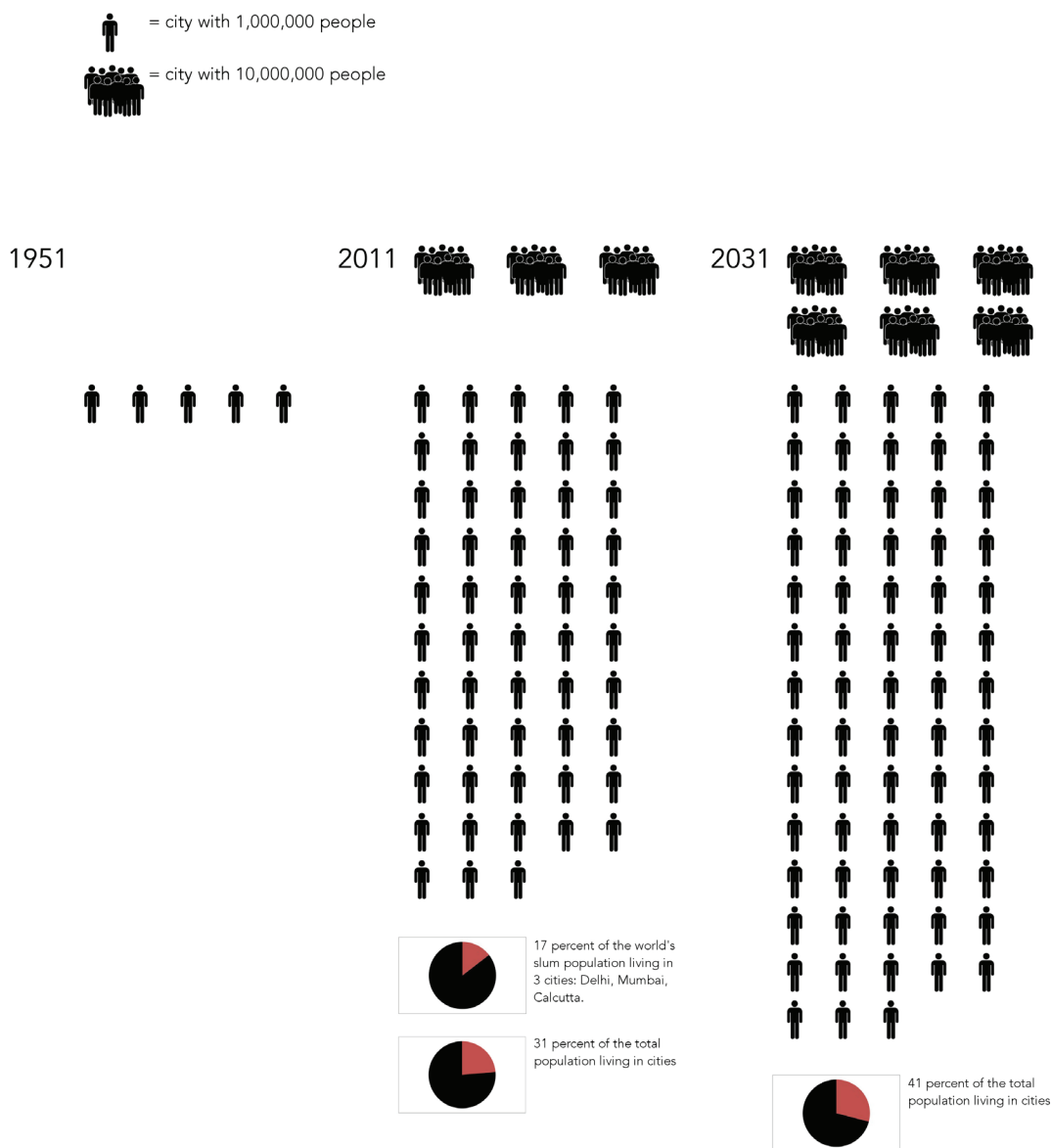
In order to illustrate the growing crisis that stems from accelerated urbanisation, we can look at the history of megacities in India. India's unplanned urbanisation, and the significant human rights issues this has raised, is not unique, but symptomatic of the situation in numerous cities across the global south.

As we can see in graphic 2, India in 1951 had five cities with populations of one million. In 2011, India had 51 cities with one million and three cities with ten million people. The 2031 projection indicates that India will have six cities with a population of more than ten million people.

The 2011 statistics are sobering. Three of India's mega-cities (Delhi, Mumbai, and Calcutta) make out 17 percent of the world's slum population. In 2011, 31 percent of India's population was living in cities. In 2031, 41 percent of the country's population will be living in slums.

That so many people and communities are forced to exist in insecure and inadequate housing and living conditions globally is a tragedy in and of itself. Such dire conditions, however, mask an even more sobering reality

Graphic 2: India's Urban Population, 1951, 2011, and 2031



that is faced by the world's slum dwellers. This is the global phenomenon of forced evictions and displacement that has become a regular feature of life for slum dwellers. The growth of slums in the world's cities is related to people and communities being displaced from their homes and lands due to ethnic and armed conflict and disasters. The growth of slums, however, is also ironically the direct result of misguided "development" policies.

The numbers are staggering. Globally there are nearly sixty million people displaced as a result of war, persecution, and other factors, according to UNHCR.⁶ As the commission reports, "one in every 122 humans is now either a refugee, internally displaced, or seeking asylum." This is due in large part to the con-

⁶ UNHCR, Worldwide displacement hits all-time high as war and persecution increase, www.unhcr.org.

flict in Syria and 15 other conflicts across Sub-Saharan Africa, the Middle East, and Asia. Many people find themselves stranded in perennially unstable environments, as typified by Somalia and Afghanistan. Another trend that has been gaining recent attention in the media is migrant boat journeys. Many people from Africa attempt dangerous journeys to Europe, and in Southeast Asia refugees from Burma and neighbouring countries flee to Thailand, Malaysia, and Australia. Despite increased visibility of the issue, there is no durable solution in sight. Global displacement has been rising steadily over the past ten years, growing by nearly a third since 2005.

Compared to data on the number of people displaced by conflict and disasters, comprehensive figures on development-induced displacement are scant. Existing data, however, suggests that, over the past fifty years, more people have been displaced by development projects than by conflict and disasters. In a study conducted by the World Bank Environment Department, in 1993 alone two million people were displaced by World Bank projects (primarily the construction of large dams and urban infrastructure). This figure is only a small part of the total number of people displaced by development projects. As noted by Jason Stanley, "It is worth keeping in mind that displacement in Bank-assisted projects accounts for only a small fraction of the estimated global total—about three per cent of global dam displacement and one per cent of global displacement from urban and transportation projects."⁷

Displacement of people and communities is a global phenomenon, but there are two countries that stand out in particular—India and China. The National Research Center for Resettlement in China has noted that over 45 million people were displaced by development

projects between 1950 and 2000.⁸ A study by Nalini Negi and Sujata Ganguly estimated that around fifty million people have been displaced in India due to development projects in the last fifty years. Of these, dams, mines, industrial development, and others account for over 21 million displaced.⁹ Michael Cernea estimates that 15 million people around the world will be displaced annually by development projects during the 2011-2020 period.¹⁰ Displacement caused by the types of projects mentioned above has been recognised by the United Nations as a consequence of forced evictions. The impacts of forced evictions constitute gross violations of national and global human rights standards. Forced evictions and displacement occur for different reasons. They are taking place across the world, in a range of both democratic and authoritarian states. Many are so-called development-based evictions, which include those planned or conducted under the pretext of serving the "public good," such as slum-clearance drives, large-scale infrastructure projects, and land-acquisition measures associated with urban renewal, housing renovation, city beautification, and other land-use programmes. Evictions are also on the rise due to the reluctance of states to control speculation in housing and property—resulting in the now rampant phenomenon of gentrification.

Most of the types of evictions outlined above share common features that are, in of themselves, violations of internationally accepted human rights norms: lack of prior notice; inadequate or no consultation; absence of

⁷ Jason Stanley, *Development-induced displacement and resettlement*, www.forcedmigration.org.

⁸ R. Fuggle, W.T. Smith, Hydrosult Canada Inc., and Androdev Canada Inc., *Experience with Dams in Water and Energy Resource Development in The People's Republic of China*. Country review paper prepared for the World Commission on Dams, Cape Town, South Africa, 2000.

⁹ Nalini Singh Negi and Sujata Ganguly, *Development Projects vs. Internally Displaced Populations in India: A Literature Based Appraisal*, University of Bielefeld (2011), www.pub.uni-bielefeld.de.

¹⁰ As quoted in Bogumil Terminski, *Development-Induced Displacement and Resettlement: Causes, Consequences, and Socio-Legal Context*, Ibidem Press, 2015.

information-sharing; no possibility of participation in the decision-making process for those affected; lack of housing alternatives; and the use of excessive force in carrying out evictions.

The next section of this paper looks at the human rights impacts of evictions and the response of the United Nations, especially in the creation of soft-law instruments that can guide the behaviour of states and non-state actors.

Human Rights Impacts

Above all, the impact on those affected by forced evictions and displacement can often be characterized as a human tragedy. In the wake of forced evictions, people are often left homeless and destitute, without means of earning a livelihood and, in practice, with no effective access to legal or other remedies. Discrimination seems to play a critical role in forced eviction cases as ethnic, religious, racial, and other minorities as well as indigenous people are far more likely than others to be evicted. As a general rule, forced evictions affect the poorest and socially and economically most vulnerable and marginalized sectors of society; they also intensify inequality and social conflict, contributing to segregation and the creation of “apartheid cities.” The results, for example, of a recent eviction impact-assessment exercise in a low-income settlement in New Delhi, demonstrated that the average family losing a home in a demolition was exposed to violations of their rights to housing, work, health and education.¹¹

The human rights approach also compels us to disaggregate impacts. Women, for example, suffer particularly as a result of forced evictions and as a consequence not just from loss of home, but also livelihoods, relationships and support systems, breakdown of kinship ties, physical and psychological trauma, and even increased morbidity and mortality. Of serious

consequence is also the fact that evictions increase the vulnerability of women to further acts of violence. In addition to the impact of the lack of adequate housing and living conditions, the following impacts have been evident for women who have faced evictions:¹²

Loss of Livelihood and Income: While rehabilitation packages can sometimes include opportunities for alternative occupations (e.g.: offers of one job per family as compensation), due to gender bias within the family, women often cannot access these opportunities. Further, the choices for exploring alternative employment and livelihood options for women are limited because of their lower access to education, exposure, and mobility. As a result it has been found that women are forced to leave home in search of employment in urban areas or overseas. Many women are forced to take jobs where they are exposed to hazardous and stressful working conditions, sexual harassment, and an urban culture and lifestyle that they find hard to cope with. Women’s economic activities are an important source of income for the households and therefore it is important to ensure that this is enumerated in planning and executing resettlement programmes.

¹¹ For more details see later section in the paper on “The Eviction Impact Assessment Tool.”

¹² These impacts also draw on the annual report of the SR RAH on forced evictions, 2004, which in turn is based on the vast experience gained by the SR on his country missions and during the initial phase of his global study on women and housing, including testimonies provided by grassroots women from around the world.

Increased Workload: In general, women are responsible for food, fuel, and fodder in the family. With the monopolization of natural resources like forest, water, and land by development projects—and often also as a result of the negative environmental consequences of these projects—fuel, fodder, and water become scarce. This has a direct impact on the lives of the women affected, as they are the ones responsible for acquiring these items for the family. Unless this is addressed in the resettlement planning and execution, some of the inevitable fallouts are that women will be left walking longer distances and spending more time and money to access these resources.

Lack of Compensation: The non-existence, in most cases of development-based displacement, of any form of rehabilitation and compensation has a severe impact on women's rights to housing, health, and personal security.¹³ Even when there is some move towards the fulfilment of requirements for resettlement and rehabilitation, women stand disadvantaged. This is because, in most projects, compensation as well as resettlement and rehabilitation are based on legal ownership of land and property. Since in most societies women do not have legal rights to land and property, they are not eligible for compensation and benefits that may otherwise be available. In other cases, women are excluded due to gender-biased definitions of female family members as dependants.

Lack of Mobility and Access to Public Domain: The involuntariness of evictions, the unexpectedness, and most often the lack of preparation for such an eventuality make it hard for women to cope. Further, restricted mobility and lack of access to the public domain are some of the gender-specific factors resulting in a lack of women's ability to adjust to new situations.

Breakdown of Community: Breakdown of community and other social networks, which is often caused by the process of dislocation, affects women more because of their greater dependence on them. Social relationships and bonds play a particularly significant role in women's lives. They are dependent on community and other social networks for emotional as well as practical support such as taking care of children. In times of both celebration and distress, social networks are important. They provide women a sense of security. Dislocation can be traumatic if these relationships break down.

Increases in Morbidity: Studies across the world have shown increase in morbidity and mortality rates due to involuntary dislocation. Age-specific death rates show higher mortality and morbidity rates for female children and women up to 35 years. If there is an increase in morbidity induced by displacement, the first to be hit will likely be women. Similarly, the nutritional and health status of women is lower than men even under normal circumstances, so it is likely to be even lower in situations of displacement.

Developments at the United Nations

Since the early 1990s, numerous United Nations bodies have expressed grave concern

about the widespread prevalence of the phenomenon of forced evictions.¹⁴ The attention

¹³ See, for example, *Planned Dispossession: Evictions and the Impact of the 2010 Commonwealth Games*, HLRN, New Delhi, February 2011, www.hic-sarp.org.

¹⁴ CESCR (1991), *General Comment 4, The right to adequate housing* (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991).

given to this phenomenon is a direct result of national and international NGOs submitting the relevant information. The first significant breakthrough at the UN came from details of evictions from across the world revealed by the Habitat International Coalition (HIC). HIC, using information from local and national members, approached the UN Commission on Human Rights (UNCHR) in 1993 and was able to convey successfully the urgency of the situation. In response, the UNCHR unanimously adopted a resolution entitled “forced evictions,” stating that “forced evictions are a gross violation of human rights, in particular the right to adequate housing.”¹⁵ It observed that

forced evictions and homelessness intensify social conflict and inequality and invariably affect the poorest, most socially, economically, environmentally and politically disadvantaged and vulnerable sectors of society.

Subsequently, following receipt of voluminous information on the scale of evictions and their negative human rights impacts, the UN Committee on Economic, Social and Cultural Rights (UNCESCR) adopted General Comment No. 7 (GC7) on forced evictions.¹⁶ Paragraph 9 of GC7 underlines that state parties are obliged to use all appropriate means to protect the rights recognized in the covenant and that “legislation against forced evictions is an essential basis upon which to build a system of effective protection.” The committee defined the term “forced eviction” and reaffirmed that forced evictions are prima facie violations of the right to adequate housing. It acknowledged that women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups suffer disproportionately from the practice of forced eviction. It then continued that states should be strictly prohibited from intentionally mak-

ing a person, family, or community homeless following an eviction, whether forced or lawful. The non-discrimination provisions of the covenant impose an additional obligation upon governments to ensure that no forms of discrimination are involved. Paragraph 15 of GC7 also elaborates on the appropriate procedural protection and due process to be put in place to ensure that human rights are not violated in connection with forced evictions, including

(a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

In 2000, the UN Human Rights Council (UNHRC) appointed a Special Rapporteur on the Right to Adequate Housing (hereinafter referred to as special rapporteur on housing, or SRH). From the beginning, the SRH witnessed (during his country missions) and received reports on land grabbing and forced evictions around the world. The scale of dispossession caused by evictions prompted the SRH to devote his 2004 annual report to the UN Commission on Human Rights to the issue of forced evictions. In the report the special rapporteur reviewed the types of evictions that were taking place, the causes of these evictions, and their human rights impacts on specific groups. The SRH also reviewed the level of protection offered against evictions by laws and policies at the international, regional, and national levels.¹⁷

¹⁵ UNCHR (1993), *Forced Evictions*, Resolution 1993/77. Unanimously adopted on 10 March, 1993.

¹⁶ CESCR (1997), *General Comment 7, Forced evictions, and the right to adequate housing* (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997).

¹⁷ Report of the Special Rapporteur on Adequate Housing (2004), Miloon Kothari, E/CN.4/2004/48.

In the recommendations flowing from the analysis presented in the report, the SRH requested the commission to authorize a process where he could lead the development of clear operational guidelines for states on forced evictions. This process led to the

development of the UN Basic Principles and Guidelines on Development-based Evictions and Displacement. The UN Guidelines were presented to the UNHRC in 2007 and formally acknowledged by the council during its session in December of that year.¹⁹

The UN Guidelines on Evictions: Main Provisions

The UN Guidelines on Evictions, while firmly based on existing international human rights law, offered several new prescriptions based on experiences gathered worldwide since the adoption of GC7 by the UNCESCR in 1997.¹⁸ They address all aspects of eviction scenarios, including stringent criteria outlining when they can occur, how they should proceed, how to monitor evictions' effects on specific populations, intersectional human rights, and the actors involved throughout all of the above processes. In particular, the UN Guidelines on Evictions define the practice of forced evictions (paragraphs 4-8) and lay down stringent criteria under which displacement can occur in "exceptional circumstances," with "full justification" and procedural guarantees (§ 21).

Further, they enumerate detailed steps to be taken by states to protect human rights prior to, during, and after evictions (§§ 37, 58). Prior to displacement, they call for comprehensive "eviction-impact assessments" (§§ 32, 33, 42). After displacement, they call for provision of compensation, restitution, and adequate rehabilitation consistent with human rights standards (§§ 42, 60-63, 69, 70).

Across diverse scenarios, they provide useful guidance on environmental phenomena,

such as disasters and climate change-induced displacement (§§ 52, 55), that lead to displacement, and they then establish a "right to re-settle" consistent with the right to adequate housing for displaced communities living in adverse conditions (§§ 16, 52-56). They also call on states, in pursuance of an "immediate obligation," to guarantee security of tenure to all those currently lacking titles to home and land (§§ 23, 25).

The guidelines also contain a number of provisions dealing directly with particular populations that are often at risk across geographies. To this end, they provide a strong gender perspective, including protection and entitlements to women (§§ 7, 15, 26, 29, 33, 34, 38, 39, 47, 50, 53, 54, 57, 58). They also protect children's rights to adequate housing (§§ 21, 31, 33, 47, 50, 52, 54, 56). Building on specific provisions for women and children, they emphasise the differential nature of impacts of evictions on marginalised groups and communities, including indigenous peoples, minorities, historically discriminated groups, persons with disabilities and older persons, and call for the protection of their human rights (§§ 21, 29, 31, 33, 38, 39, 54, 57).

A number of other human rights intersect—with varying levels of dependency—with the

¹⁸ Report of the Special Rapporteur on Adequate Housing (2007), Miloon Kothari, A/HRC/4/18. (Containing the UN Basic Principles and Guidelines on Development based Evictions and Displacement).

¹⁹ UNHRC (2007), *Adequate housing as a component of the right to an adequate standard of living*, Human Rights Council Resolution 6/27, A/HRC/6/L.11/Add.1, Adopted unanimously on 14 December 2007.

right to adequate housing. The guidelines enumerate the most congruent of these rights, including the human right to work/livelihood (§§ 43, 52, 63); the human right to land (§§ 16, 22, 25, 26, 30, 43, 56, 60, 61, 63, 71); to food (§§ 52, 57); to health (§§ 16, 54-57, 63, 68); and to education (§§ 16, 52, 57, 60, 63).

The guidelines also detail states' responsibilities vis-à-vis all of the actors involved in the protection of human rights, including the state itself. They call for the protection of the rights of human rights defenders (§ 22). They also stress the obligation of non-state actors (§§ 11, 71-73) and call for states to take intervening measures to ensure that market forces do not increase the vulnerability of low-income and marginalised groups to forced eviction (§§ 8, 30).

It is useful to summarise the various sections of the UN Guidelines on Evictions according to the following categories: (a) Scope and nature of the UN Guidelines; (b) Implementation of state obligations; (c) Preventative strategies, policies, and programmes; (d) Safeguards prior to evictions; (e) Safeguards during evictions; (f) Safeguards after evictions; (g) Remedies for forced evictions, including compensation.

Scope and Nature of the UN Guidelines

The intention of the UN Guidelines, while recognizing the wide range of contexts in which forced evictions take place, is to focus on providing guidance to states on measures and procedures to be adopted in order to ensure that development-based evictions are not undertaken in contravention of existing international human rights standards and do not thus constitute "forced evictions." The guidelines aim to provide a practical tool to assist states and agencies in developing policies, legisla-

tion, procedures, and preventive measures to ensure: (i) protection of the right to adequate housing for all those currently threatened with evictions; (ii) that forced evictions do not take place; and (iii) provision of effective remedies to those whose human rights have been violated, should prevention fail. The guidelines define "forced evictions" in the context of existing international standards as

acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.

Implementation of State Obligations

The guidelines place an obligation on states to ensure that evictions only occur in exceptional circumstances. According to the guidelines, evictions require

full justification given their adverse impact on a wide range of internationally recognized human rights. Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare;²⁰ (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law.

The guidelines also call on states to

⇒ adopt legislative and policy measures prohibiting the execution of evictions that are

²⁰ The promotion of the general welfare refers to steps taken by states that are consistent with their international human rights obligations, in particular the need to ensure the human rights of the most vulnerable.

not in conformity with their international human rights obligations;

- ⇒ carry out comprehensive reviews of relevant national legislation and policy with a view to ensuring their conformity with internationally recognized human rights provisions;
- ⇒ take immediate measures aimed at conferring legal security of tenure upon those persons, households, and communities currently lacking such protection, including all those who do not have formal titles to home and land.

Preventive Strategies, Policies and Programmes

In this section of the UN guidelines, states are asked to

- ⇒ take preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate. States should review the operation and regulation of the housing and tenancy markets and when necessary, intervene to ensure that market forces do not increase the vulnerability of low-income and other marginalized groups to forced eviction;
- ⇒ ensure sufficient protection against physical or economic pressures on residents to leave or be deprived of adequate housing or land;
- ⇒ give priority to exploring strategies that minimize displacement;
- ⇒ ensure that comprehensive impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement;
- ⇒ ensure that impact assessments also include exploration of alternatives and strategies for minimizing harm.

Safeguards prior to Evictions

Prior to carrying out any eviction, the guidelines call for states to

- ⇒ fully explore all possible alternatives to evictions;
- ⇒ request mediation, arbitration, or adjudication, as appropriate, from an independent body having constitutional authority, such as a court of law, tribunal, or ombuds-person, in the event that an agreement cannot be reached on a proposed alternative among concerned parties;
- ⇒ extend opportunities for dialogue and consultation during planning processes to the full spectrum of affected persons, including women and vulnerable and marginalized groups, and, when necessary, through the adoption of special measures or procedures.

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

The guidelines articulate the steps that states should take prior to taking any decision to initiate an eviction. The relevant authorities should

- ⇒ demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare;
- ⇒ announce in writing in the local language any decision relating to evictions to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review;
- ⇒ allow and enable those subjected to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Affected people should also be given the opportunity to assess and document non-monetary losses to be compensated;
- ⇒ ensure that said eviction does not result in individuals being rendered homeless or vulnerable to the violation of other human rights;
- ⇒ ensure that resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, are consistent with the present guidelines and internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling.

Safeguards during Evictions

The guidelines lay down the following conditions for the safeguarding of human rights during the process of evictions:

- ⇒ The procedural requirements for ensuring respect for human rights standards in-

clude the mandatory presence of governmental officials or their representatives on site during evictions.

- ⇒ Neutral observers, including at the regional and international levels, should be allowed access upon request, to ensure transparency and compliance with international human rights principles during the eviction.
- ⇒ Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected.
- ⇒ Evictions must not take place (a) in inclement weather; (b) at night; (c) during festivals or religious holidays; (d) prior to elections; or (e) during or just prior to school examinations.
- ⇒ States and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence.

Safeguards after Evictions

The guidelines state that the government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon eviction, except in cases of force majeure. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously

depended upon; (g) education for children and childcare facilities.

The guidelines state that identified relocation sites must fulfil the criteria for adequate housing according to international human rights law. These include: (a) security of tenure; (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind, or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas; (g) culturally appropriate housing.²¹ In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered.²²

To ensure compatibility of resettlement processes with the UN Guidelines, states should ensure that in the context of any case of resettlement the following criteria are adhered to:

- ⇒ No resettlement shall take place until such time as a comprehensive resettlement policy consistent with the UN Guidelines and internationally recognized human rights principles is in place.

- ⇒ Resettlement must ensure that the rights of women, children, indigenous peoples, and other vulnerable groups are equally protected, including their right to property ownership and access to resources.
- ⇒ The actor proposing and/or carrying out the resettlement shall be required by law to pay for any associated costs, including all resettlement costs.
- ⇒ No affected persons, groups or communities shall suffer detriment, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction.
- ⇒ The right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed. The State shall provide all necessary amenities, services and economic opportunities at the proposed site.
- ⇒ The time and financial cost required for travel to and from the place of work, or to access essential services, should not place excessive demands upon the budgets of low-income households.
- ⇒ Relocation sites must not be situated on polluted land or in immediate proximity to pollution sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants.
- ⇒ Sufficient information shall be provided to the affected persons, groups, and communities on all state projects and planning and implementation processes relating to the resettlement, including information on the purported use of the eviction dwelling or site and its proposed beneficiaries. Particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women, and children are represented and included in this process.

²¹ See general comment No. 4 on adequate housing adopted by the Committee on Economic, Social and Cultural Rights in 1991, tbinternet.ohchr.org.

²² For the expanded list of elements of the right to adequate housing see Report of the UN Special Rapporteur on Adequate Housing (2007), Annex II, daccess-dds-ny.un.org.

- ⇒ The entire resettlement process should be carried out with full participation by and with affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities.
- ⇒ If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least ninety days' notice prior to the date of the resettlement.
- ⇒ Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence, or intimidation.

Remedies for Forced Evictions, including Compensation

The guidelines also recommend remedies for people and communities that have faced forced evictions. Appropriate remedies called for by the guidelines include, as applicable: (i) a fair hearing; (ii) access to legal counsel; (iii) legal aid; (iv) return; (v) restitution; and (vi) resettlement, rehabilitation, and compensation. The guidelines state that when eviction is unavoidable, and necessary for the promotion of general welfare, the state must provide or ensure

- ⇒ fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property;
- ⇒ compensation for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance,

medicine and medical services, and psychological and social services;

- ⇒ compensation that under no circumstances replaces cash transfers with real compensation in the form of land and common property resources;
- ⇒ that, where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.

Consistent with the requirement in the guidelines for the necessity of carrying out eviction impact assessments prior to evictions, the compensation section of the guidelines state that

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

The UN Guidelines offer prescriptions for preventing evictions and ensuring safeguards of the human rights of those threatened with evictions prior to, during and after evictions. In addition they also call upon states to actively monitor and carry out evaluations to determine the consequences of evictions. States

are also called upon to entrust an independent national body, such as a national human rights institution, to monitor and investigate forced evictions and state compliance with these guidelines and international human rights law. These can form elements of national evictions acts that are necessary to enact.

Using the UN Evictions Guidelines

Since their acknowledgement in 2007 by the UN Human Rights Council, the UN Guidelines on Evictions have been utilised in numerous ways by local, national, and international civil society organisations, independent institutions, academic bodies, various UN bodies, and multi-lateral organisations. Some examples of such uses illustrate the valuable role that human rights soft law instruments can play, including as a global standard that can act as a restraining instrument against one of the most persistent impacts of global neoliberal economic and globalisation policies and the development projects that are the means through which these policies are implemented.

Translations: A recent survey by the author, of the work of international organisations, academic bodies and civil society organisations, reveals that the UN Evictions Guidelines have been translated into twenty two languages.²³ The translations (along with manuals and handbooks) have significantly assisted, for example, local civil society organisations to understand their human rights when faced with land grabbing and displacement, comprehend the onerous responsibilities that their governments face in ensuring that evictions can only occur in 'exceptional circumstances' and develop strategies, around the principles and provisions of the guidelines, to counter displacement.

Manuals and Handbooks: A number of organisations have prepared manuals and handbooks²⁴ on how to use the UN Evictions Guidelines. These publications have been useful for local civil society groups as explained above. In addition NGO's at the national and international level and UN agencies have used these handbooks as training and advocacy material. Handbooks have also been developed to assist in specific tasks such as 'legal observing' to ensure that the human rights of potential victims of evictions are not violated during the process of evictions.²⁵ Most recently a detailed manual has been prepared by the Housing and Land Rights Network (HLRN) in India on 'How to respond to Forced Evictions'.²⁶ The HLRN manual outlines all of the national and international laws applicable in situations of forced eviction. The manual refers to a number of UN treaties and conventions in the sections dealing with international law and norms. The UN Guidelines of Forced Evictions are used to detail the

²³ For the numerous translations see OHCHR, Forced Evictions, www.ohchr.org.

²⁴ See, for example, various language versions of the Handbook on the UN Evictions Guidelines at www.hic-sarp.org. See also Lilian Chenwi, *Evictions in South Africa: Relevant National and International Standards*, Community Law Centre, University of the Western Cape, August 2008; *Derechos Humanos, Proyectos de Desarrollo y Desarrollo: Una Guía Práctica*, prepared by HIC-Latin America and the Mexican Office of the UN Office of the High Commissioner for Human Rights.

²⁵ Human Rights Clinic of the University of Essex, Guide to Legal Observing of Forced Evictions, 2011, direitoamordia.org.

²⁶ HLRN, How to Respond to Forced Evictions. A Handbook for India, New Delhi, 2014, www.hic-sarp.org.

“remedies” available for these problems, specifically as regards “Fair and Just Compensation,” “Restitution and Return,” and “Resettlement and Rehabilitation.”

The guidelines have also been referenced in a number of resource books that compile cases and materials on human rights and are frequently used across the world as textbooks for university courses on human rights.²⁷

Legal Petitions and Court Judgements: Increasingly, civil society organisations and independent institutions with a legal mandate have been using the UN Evictions Guidelines as a basis for argument in their affidavits as petitioners or amicus curiae.²⁸ These petitions have, on numerous occasions, influenced court judgements and led to either a halt to the planned evictions or a resettlement program consistent with international human rights law.²⁹

The case *Sudama Singh and Others vs. Government of Delhi and Anr.* was brought to the Indian High Court to seek intervention on behalf of slum dwellers in Delhi. The petitioners were seeking the provision of alternative land in response to the demolition of their “jhuggies” (hutments). The petitioners sought this compensation via a claim on their right to adequate housing. The High Court judges used both Indian constitutional law as well as the UN Evictions Guidelines to uphold this right to adequate housing. In particular, the judges referred to one of the key substantive paragraphs of the guidelines that details basic human rights standards for eviction and re-

location.³⁰ A similar precedent was set in the “Muthurwa” case, where the judge, lacking the existence of national law on evictions, used the UN Evictions Guidelines as a basis for the final judgement. In this case the judge also called for a national law on evictions in Kenya to be modelled on the UN Evictions Guidelines.³¹ Another significant judgement from the Kenyan High Court regarding the situation in Kibera Slum in Nairobi also uses the UN Evictions Guidelines as a guide to the resolution of the resettlement rights of slum residents. Judge G.V. Odunga stated in the judgement that “the UN Evictions Guidelines should be seen as part of Kenyan Law”.³²

In a path-breaking development, the Mexican Supreme Court in 2014 issued a “protocol” intended to serve as a reference for judges as they adjudicate cases where large infrastructure, mining, and development projects can cause human rights violations. The protocol refers to all infrastructure, mining, and large-scale development projects in Mexico including roads, oil & mineral extraction, dams, large real estate projects, tourist developments, and power plants. This wide focus means that the protocol could have a significant impact on the way such cases are heard and interpreted in Mexico—and could be interpreted to include any and all urban or rural construction projects. The protocol uses the UN Evictions Guidelines as a basis for its arguments.³³

Use by UN, Regional, and National Human Rights Bodies: The UN Evictions Guidelines are being increasingly relied on by different parts of the UN human rights system when assessing the situation of evictions. The UN Committee on Economic, Social and Cultural

27 Henry J. Steiner, Philip Alston, Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals*, Oxford University Press, 2008; Ben Saul, David Kinley and Jaqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, Oxford University Press, 2015.

28 See, for example, the Dullah Omar Institute’s statements, communitylawcentre.org.za.

29 HLRN, India (2013), *Reaffirming Justiciability: Judgements on the Human Right to Adequate Housing from the Delhi High Court*, India.

30 Paragraph 35 of the UN Evictions Guidelines.

31 High Court of Kenya (2010), Petition No. 65 of 2010, reproduced in Kenya Law, kenyalaw.org.

32 High Court of Kenya (2014), Petition 239 of 2014, reproduced in Kenya Law, kenyalaw.org.

33 See “Protocolo de Actuación para Quienes Imparten Justicia en Casos Relacionados Con Proyectos de Desarrollo y Infraestructura,” 2014, equidad.scjn.gob.mx.

Rights has revised its State Reporting Guidelines to suggest that states take the UN Evictions Guidelines into account when preparing their reports.³⁴ The UNCESCR has also used the UN Evictions Guidelines in a number of concluding observations that contain recommendations for states on resolving forced evictions cases.³⁵ UN Country Teams have used the guidelines in documents aimed at influencing national government policies on housing and displacement. The UN's Afghanistan Protection Cluster, for example, drew upon the UN Guidelines in article 8b of its Guidelines for Mitigating Harm and Suffering in Situations of Forced Evictions to require local authorities to hold extensive consultations with the local population and demonstrate that the proposed eviction is unavoidable prior to initiating the eviction-inducing project.³⁶

UN agencies are also increasingly citing the guidelines in their manuals, reports, and fact sheets. The United Nations Educational, Scientific, and Cultural Organisation (UNESCO) refers to the guidelines in its manual on empowering the poor through legislative means.³⁷ The Office of the UN High Commissioner for Human Rights (OHCHR), recognising the emphasis placed by the UN Evictions Guidelines on substantive and procedural safeguards, has cited the guidelines in its handbook on the protection of internally displaced persons (IDPs).³⁸ OHCHR makes extensive use of the guidelines in its fact sheet on forced evictions.³⁹ The recent report from UN Women on the State of the World's Women also cites the guidelines.⁴⁰

The African Commission on Human and Peoples' Rights made extensive use of the UN Evictions Guidelines while preparing their principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights.⁴¹

Various national human rights commissions are also using the UN Evictions Guidelines to monitor local human rights situations, and to propose national standards on evictions, resettlement, and rehabilitation in their reports to the UN Human Rights Council under its universal periodic review process.⁴²

A number of UN Special Rapporteurs have used the guidelines in their reports to assist with further standard setting (SR on Right to Food, SR on Housing) and as guidance for countries on how to deal with forced evictions (SR on Eritrea) and land grabbing (SR on Cambodia). A pertinent example of the use of the guidelines is contained in the set of core principles put forward by the former Special Rapporteur on the Right to Food, Olivier De Shutter, on large-scale land acquisitions. In the recommendations section the UN Evictions Guidelines are used as one basis on which states should enact legislation to protect local communities from human rights violations that occur before, during, and after evictions.⁴³

Policy Recommendations by National and International Civil Society Groups and Independent Institutions: The UN Evictions Guidelines have been used extensively by national and international civil society organisations. These uses have included: reports to various bodies in the UN Human Rights System; in fact-finding reports; in manuals and hand-

34 See OHCHR, tbinternet.ohchr.org.

35 See, for example, the OHCHR's Concluding Observations on Indonesia 2014: tbinternet.ohchr.org.

36 See Afghanistan Protection Cluster, www.globalprotectioncluster.org.

37 UNESCO, *Manual on Empowering the Poor through Human Rights Litigation*, 2011.

38 UNHCR, *Handbook for the Protection of Internally Displaced Persons*.

39 OHCHR, Fact Sheet on Forced Evictions.

40 UN Women, *Progress of the World's Women 2015-2016: Transforming Economies, Realizing Rights*.

41 See African Commission on Human and Peoples' Rights, www.achpr.org.

42 See National Human Rights Commission of Bangladesh, *Stakeholder Report Universal Periodic Review – 2nd Cycle*, www.upr-info.org.

43 Olivier De Shutter, Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge, 2009, www2.ohchr.org.

books as mentioned above, and in court affidavits and policy documents at national and international levels. These policy documents have also attempted human rights critiques and advanced recommendations during the reviews of guidelines and safeguards policies of multilateral institutions such as the International Finance Corporation (IFC) and the World Bank. These types of submissions, often made by broad-based NGOs, have for example had an impact at the IFC, which has included references to the UN Evictions Guidelines in its Guidance Note on Land Acquisition and Involuntary Resettlement.⁴⁴

Academic institutions are also using the UN Evictions Guidelines in their policy submissions, for example, on the need for reform of the East Asian extractive industries growing appetite for land.⁴⁵ The MIT-based Displacement Research and Action Network (DRAN), in its work on development-based evictions, also uses the UN Evictions Guidelines as its principal human rights standard.⁴⁶

The Council of Europe has also referred to the UN Evictions Guidelines in its recommendations to local and national authorities to halt the land grabbing that continues to severely impact the Roma people.⁴⁷ To expand on this last example in order to illustrate the larger point, the Congress of Local and Regional Authorities of the Council of Europe refers to the supranational guidelines to establish a legal standard for the protection of Roma from land grabbing. The congress specifically invokes the guidelines in Article 6i of Recommendation 315 (2011) to urge the Committee of Ministers of

the Council of Europe to call on member states to protect the housing rights of the Roma.

Academic Analysis of the Relevance of the UN Evictions Guidelines: Since the emergence of the UN Evictions Guidelines in 2007, a number of eminent academics from across the disciplines (sociology, law, geography, environment, gender studies, and others) have written about the relevance of the UN Evictions Guidelines. These academics have held up these guidelines as a global soft-law standard that can be of great use to tackle a range of human rights situations. A number of scholars have written about the potential of the UN Evictions Guidelines as a standard that can “regulate the functioning of the right to property” and “support arguments for a human right to property.” John G. Sprankling, for example, argues that the UN Evictions Guidelines are an important step in the recognition of an “international property law” imbued with human rights principles in that they “delimit the capacity of states and certain non-state actors to conduct large-scale evictions of citizens in order to facilitate development projects.”⁴⁸ Cottier, Gehne, and Schutheiss have stated that the right to property is subject to the UN Evictions Guidelines. The guidelines, according to the authors recognise the “strong links between property in land and other human rights such as the right to adequate housing, self-determination, food, work and security of the person and home[...].”⁴⁹

The relevance of the UN Evictions Guidelines has also been pointed out by scholars in the context of the right to food and land grabbing. Olivier de Shutter has written about the protective nature of the requirement in the guidelines to ensure “security of tenure” for pea-

44 International Finance Corporation, Guidance Note 5, www.ifc.org.

45 See, for example, the Policy Submission by the Singapore Management Institute and MAZAR, 2012, business-humanrights.org.

46 See Displacement Research and Action Network, displacement.mit.edu.

47 See European Council's Recommendation 315: The situation of Roma in Europe: a challenge for local and regional authorities, 2011, wcd.coe.int.

48 John G. Sprankling, “The Emergence of International Property Law,” *North Carolina Law Review*, 90 N.C.L. Rev. 461, January 2012.

49 Cottier T., Gehne K. and Schultheiss M., “The protection of property in international law,” in: Holger P. Hestermeyer et al. (eds.), *Coexistence, Cooperation and Solidarity: Liber Amicorum*, Martinus Nijhoff Publishers, 2011.

sants as a safeguard against their removal from the lands on which their livelihood depends.⁵⁰ In a similar vein, Elisabeth Gorman has argued that the UN Evictions Guidelines are one of the “International Provisions (that) Call for Vindication of Small Landholders’ Human Rights” based on “solid international law.”⁵¹ Surya Subedi, the UN Special Rapporteur for Human Rights in Cambodia from 2008-2015, has argued for the need of the Cambodian government to use the provisions of the guidelines to search for alternatives to land grabbing and evictions and adequate resettlement should it be necessary.⁵²

While the UN Evictions Guidelines were primarily intended for use in situations of “development-based displacement,” a number of scholars have correctly pointed out their significance in situations (before and after) disasters and conflict. The guidelines have, therefore, been evoked by these scholars for issues ranging from climate change to transitional justice. Jeanette Schade, in a chapter on climate change and planned relocation, suggests that the UN Evictions Guidelines add value to the discussion on the relevance of economic, social, and cultural rights in the context of climate change. The guidelines achieve this through provisions that can “protect against relocation as adaptation that is unnecessary or not the best option to sustain the livelihoods of the affected” and by “linking adequate housing to the maintenance of livelihoods they contain important entitlements that protect against the livelihood risks of landlessness, joblessness, marginalisation and certainly homelessness.”⁵³

In the context of transitional justice and the critical right to restitution, a number of scholars have referred to the UN Evictions Guidelines as an important component of the body of international instruments that promote the idea that “when housing rights are accepted as subject to restitution, they have expanded the potential scope of restitution programs greatly.” As pointed out by the Rhodri Williams, the guidelines stress that forced evictions in violation of housing rights are closely associated with the broader concept of arbitrary displacement.

This link reinforces the gravity of forced evictions by recognizing that they not only take the form of isolated violations of housing rights but also represent one of the central means of carrying out acts of mass displacement such as ethnic cleansing.”⁵⁴

Increasingly, recent literature on development-induced displacement and resettlement, refer to the UN Evictions Guidelines as a standard that encapsulates the human rights approach to dealing with such forms of displacement. Bogumil Terminski recognises the UN Evictions Guidelines as the first global standard that proposes a “right to resettlement” for communities being forced to live in life and health-threatening conditions.⁵⁵ Grant Dawson and Sonia Farber’s assessment is that the UN Evictions Guidelines are an important piece in the “doctrinal shift” in international human rights law and institutions that “considers those displaced by development and those displaced by other human rights violations within the same creedal category.”⁵⁶

50 Olivier de Shutter, “The Green Rush: The Global Race for Farmland and the Rights of Land Users,” *Harvard International Law Journal*, 52 (2), Summer 2011.

51 Elizabeth R. Gorman, “When the Poor Have Nothing Left To Eat: The United States’ Obligation To Regulate American Investment in the African Land Grab,” *Ohio State Law Journal*, 75 (1).

52 Surya P. Subedi, “Land Rights in Countries in Transition: A Case Study of Human Rights Impact of Economic Land Concessions in Cambodia,” *Asian Yearbook of International Law*, 2011 (17).

53 See Jeanette Schade, “Climate Change and Planned Relocation: Risks and a Proposal for Safeguards,” in T. Faist

and J. Schade (eds.), *Disentangling Migration and Climate Change*, Springer Science, 2013.

54 Rhodri C. Williams, *The Contemporary Right to Property Restitution in the Context of Transitional Justice*. Occasional Paper Series, International Centre for Transitional Justice, 2007.

55 See, for example, Bogumil Terminski, op.cit.; also see Irge Satioglu and Narae Choi (eds.), *Development-Induced Displacement and Resettlement: New perspectives on persisting problems*, Routledge, 2015.

56 Grant Dawson and Sonia Farber, *Forcible Displacement Throughout the Ages: Towards an International Convention for the Prevention and Punishment of the Crime of Forcible Displacement*, Martinus Nijhoff Publishers, 2012.

The Eviction Impact Assessment Tool

The UN Guidelines on Evictions called on states to ensure that comprehensive and holistic impact assessments are carried out prior to the initiation of any land acquisition measures. The guidelines also stated that compensation, in case of displacement, has to be consistent with the results of the eviction impact assessments. In calling for an impact assessment exercise, the guidelines provided an opening and lent credibility for the exercise to develop the tool itself. Subsequent to the adoption of the UN Guidelines in 2007, the Housing and Land Rights Network (HLRN) of the Habitat International Coalition has developed such a tool.⁵⁷ This Eviction Impact Assessment Tool (EViA) has since been used in numerous land grabbing cases both prior to and following evictions. The results from these surveys demonstrate the manifold human rights impacts that accompany an eviction and the preventative role that such assessments can play, among other strategies, in hand with litigation.

The results of one such exercise, in the Baljeet Nagar case in New Delhi, are indicative of the scale of human rights violations resulting from forced evictions.⁵⁸ In this case it was found that the average family losing a home in the demolition suffered from a wide array of problems stemming from its eviction, including

- ⇒ loss of access to housing/shelter, including the loss of documentation supporting tenure security;
- ⇒ significant reductions in access to livelihood activities and loss of wages;
- ⇒ substantial reductions in monthly spending on food;
- ⇒ a substantial increase in expenses related to procuring water;

- ⇒ a substantial rise in both injuries and expenses related to health, both as a direct result of the demolition and its aftermath, as well as of the exacerbation and creation of chronic health conditions;
- ⇒ loss of education for children; and
- ⇒ the destruction of numerous assets and possessions.

Similar studies undertaken in Nairobi, Kenya⁵⁹ demonstrate the adverse impacts of forced evictions. The results of these surveys have been used in courts to convince the Judges to halt the evictions or to ensure adequate compensation, commensurate with the findings from the impact assessments. In the rulings on the Baljeet Nagar case in India and the Muthurwa case in Kenya, the judgements take into account the results of the impact assessments.⁶⁰ In both of these cases the affected community and community leaders were able to learn from and utilise the UN Evictions Guidelines and the EViA to advocate for a human rights approach to the process of land acquisition. In the Baljeet Nagar case this resulted in a halt to the evictions. In the Muthurwa case negotiations are underway to ensure adequate resettlement and compensation for the affected community.

The EViA has also been used to argue for better compensation for the victims of ethnic violence and floods in the Kandhamal District of the state of Orissa, India.⁶¹ Currently the EViA is being utilised by MIT's DRAN to assist the Chinese Progressive Association in preparing evidence on the destructive impact of gentrification in Boston's Chinatown.⁶²

⁵⁷ HLRN, "The Tool-Kit". www.hlrn.org.

⁵⁸ HLRN, India (2012), *Eviction Impact Assessment: Study in Baljeet Nagar*, Housing and Land Rights Network, India.

⁵⁹ Mazingira Institute (2012), *A study of the impact assessment of potential involuntary eviction of the community of Muthurwa Estate, Nairobi*, Mazingira Institute, Kenya.

⁶⁰ High Court of Kenya (2010), Petition No. 65 of 2010, reproduced in Kenya Law, kenyalaw.org.

⁶¹ See Housing and Land Rights Network Publications, hlrn.org.

Conclusion

This study has attempted to explain the human rights dimensions of forced evictions. An attempt has also been made to summarise the understanding that has emerged from over twenty years of initiatives by civil society and independent organisations as reflected in the development of an operational standard at the United Nations to minimise forced evictions. The study has also laid out the ways in which the UN Evictions Guidelines are increasingly being used by communities, community-based and civil society organisations, and other independent institutions.⁶³

A sobering assessment of the situation on the ground, as it relates to the prevalence of forced evictions, is that these UN norms are not making a significant difference in either the quantity of land being expropriated or in the number of people being displaced from their homes and lands. At all levels we need clearer recognition and analysis of the many obstacles that are blocking a more rigorous implementation of these norms. The introduction to this study outlines some of these obstacles. At the same time, the many uses of the guidelines demonstrate that it is possible to restrain the power of state and non-state actors to expropriate land while also adopting human rights standards that protect the rights of those affected before, during, and after displacement. From the results shown thus far, the significant utility of soft-law instruments like the UN

Evictions Guidelines is without doubt. There is, however, an urgent need to scale up the work in such a way that these standards are better known and can become a routine instrument in the hands of governments and civil society to safeguard the human rights of all those currently affected by the spectre of dispossession.

One major step forward would be to work towards the establishment of such human rights standards at national policy and legislative levels and to empower (or create where lacking) institutions that can monitor the implementation of these standards. The realisation of such actions, backed by the UN system where necessary, would significantly assist in stabilising the lives of millions of the world's citizens who currently face an uncertain and bleak future.

As the struggle against such onerous odds continues, civil society groups, judicial bodies, and independent institutions are increasingly relying on soft-law instruments such as the UN Evictions Guidelines to frame their demands around the global recognition of international human rights law, including the commitments of states and non-state actors to implement the obligations that arise from this recognition. The challenge before us all is to devise means—through laws, policies, administrative actions, and civil society mobilisation; and in collaboration with local and national civil society groups, independent institutions, relevant UN bodies, and governments at all levels—to ensure that in the future there is a more rigorous application of these internationally recognised human rights norms to improve the lives of the many afflicted people of this planet.

⁶² For further information, see: displacement.mit.edu.

⁶³ For an engaging discussion on the advantages and limitations of using human rights instruments and mechanisms, in the context of agrarian struggles, see Sofia Monsalves Suarez, *The Human Rights Framework in Contemporary Agrarian Struggles*, *The Journal of Peasant Studies*, 40 (1), 2013, www.tandfonline.com.