

HAQ: Centre for Child Rights

handbook on children's right to adequate housing





Handbook on Children's Right to Adequate Housing

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FOREWORD

The discourse, understanding, as well as action around children's rights have grown immensely in the last two decades, especially since the UN Convention on the Rights of the Child (1989), which drew the world's attention to human rights of children. However, children's right to adequate housing is hardly talked about. And yet, in all our work over the last ten years, we at HAQ: Centre for Child Rights have found this to be one of the critical missing links to protection of children. Lack of adequate housing makes children vulnerable to abuse and trafficking. It inhibits a child's normal and healthy growth. It is based on this understanding that HAQ had joined in with the South Asia Regional Programme of the Housing and Land Rights Network, Habitat International Coalition to publish 'Children and Right to Adequate Housing- A guide to International Legal Resources'. It seemed logical to follow that up with a handbook listing out the national legal framework.

As the Handbook clearly establishes from a human rights perspective, housing is much more than four walls and a roof. It includes an environment that is conducive to a life of security and dignity for all. The right to adequate housing includes security of tenure as well as access to public goods and services, a safe and healthy environment, adequate food, health care, education, livelihood for adults, etc. This approach also recognizes and provides space for the special needs of vulnerable groups of children, who need special attention. Thus, in bringing out these interlinkages between the right to adequate housing and child rights, it becomes clear that the type and extent of a housing rights violation, especially in the case of children, can provide fair indication of their vulnerability to other human rights violations.

While the Handbook provides an introduction to various laws that may come into play in the children and housing context, the list is not exhaustive but merely indicative. Strategies mentioned to mitigate impacts of a housing rights violation on children or to protect children from the violation of their right to adequate housing have been drawn from the experiences of various child rights, housing rights and human rights groups. Needless to say, these strategies are contextual in nature and will have to be adapted to suit local conditions. To enable the user to use the Handbook as per their needs, each section has been designed as stand-alone chapter.

We hope the information provided will be useful to groups and individuals working on both child rights as well as housing rights and will help groups build further on this issue with a view to achieving every child's right to adequate housing.

This Handbook has been long in the making and has seen several revisions because of inputs from people who read them, as well as because of the legal changes that have taken place during the time it was in the making. HAQ would like to acknowledge Child Rights and You (Child Relief and You when we began work on this) for their financial support and suggestions, in particular Amit Pande of CRY. We would also like to acknowledge Sanjay Upadhyay for his inputs on the section on the Forest Act. We are grateful to Radha Hollar Bhar for her editorial inputs.

Last but not least, it is Malavika Vartak, the author of this handbook who needs to be complimented for her patience, going through several revisions based on suggestions that have come.

Enakshi Ganguly Thukral

Bharti Ali

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Introduction



Homelessness is a word that is commonly used to describe a situation of shelter less existence or “houselessness”. However, most often people may have a shelter, a roof over their heads, but their living conditions are inadequate, unhealthy and insecure. They may be living under constant threat of eviction. Their children may live in fear of violence, within the home and outside and not have access to the basic civic amenities of water and sanitation, educational and health services, which is essential for a healthy physical and psychological growth. This too is a form of homelessness, because these children are living in inadequate living conditions.



Thomas Vanden Driessche

Children have a right to live in dignity, security and protection. Fundamental to this is their right to adequate housing for themselves and their families.

Adequate Housing is more than just a roof over one's head. It also means protection from elements, suitable living space for all inhabitants, access to basic services and infrastructure and social opportunities for all and economic opportunities for adults. This is closely linked to civil, cultural, economic, and social rights, and political rights of all children and their families. It is this concept of home or shelter that is crucial to a child's survival, growth and development.

In our fast 'developing' world, demolition of homes, displacement of communities or situations of distress-induced migration, have become very common.

- Market forces are destabilizing livelihoods pushing children and their families into poverty and destitution, forcing them to migrate in search of livelihoods.
- Pressures of globalization have led governments to implement policies and programmes supported by compliant laws and judicial decisions that have resulted in people losing their livelihoods or being driven off their homes and lands due to mega infrastructure development projects.
- City beautification or urban development programmes further aggravate the situation by resorting to forced eviction without adequate rehabilitation.

Left with no option, many are then forced to migrate to other areas, towns and cities, where they live on the streets and footpaths or in the most appalling housing conditions, in overcrowded slum clusters where lack of basic facilities becomes a way of life. And thus the cycle of housing rights violations continues. In all these situations, children are the most vulnerable

What purpose will this handbook serve?

Children, who form 45 –50 per cent of every community, are affected severely and in many different ways by the cycle of evictions. Yet, both activists and government officials, when addressing housing issues, hardly ever look upon children as 'affected people'. While we all know that a secure home with all basic facilities is critical for survival, protection and development of the child, children's rights to adequate housing is often neglected.

While considerable work has been done on issues of child labour, child trafficking, child sexual abuse, and lack of access to primary education, the issue of children and housing has received relatively less attention. Indeed, there is a connection between lack of adequate housing and the vulnerability of children to denial of other rights, such as education and health care, and the violence that they face. It is time we highlighted these linkages and this manual is an effort in that direction.

Based on the principle of indivisibility of human rights approach, we believe that the extent of protection and fulfillment of children's right to adequate housing can serve as an important indicator to measure the protection, promotion and fulfillment of child rights in general.

This handbook therefore aims to:

- Emphasize the importance of right to adequate housing in the realization of child rights as a whole;
- Familiarize child rights activists with the scope and meaning of the right to adequate housing as different from simply 'shelter';
- Highlight children's specific rights vis-à-vis the right to adequate housing;

Adequate Housing includes right to an adequate standard of living including adequate food, clothing and housing, and to the continuous improvement of living conditions.

It includes all conditions that enable a human being to live in a protective environment, and to exercise their other rights.

This definition of adequate housing has been accepted all over the world.

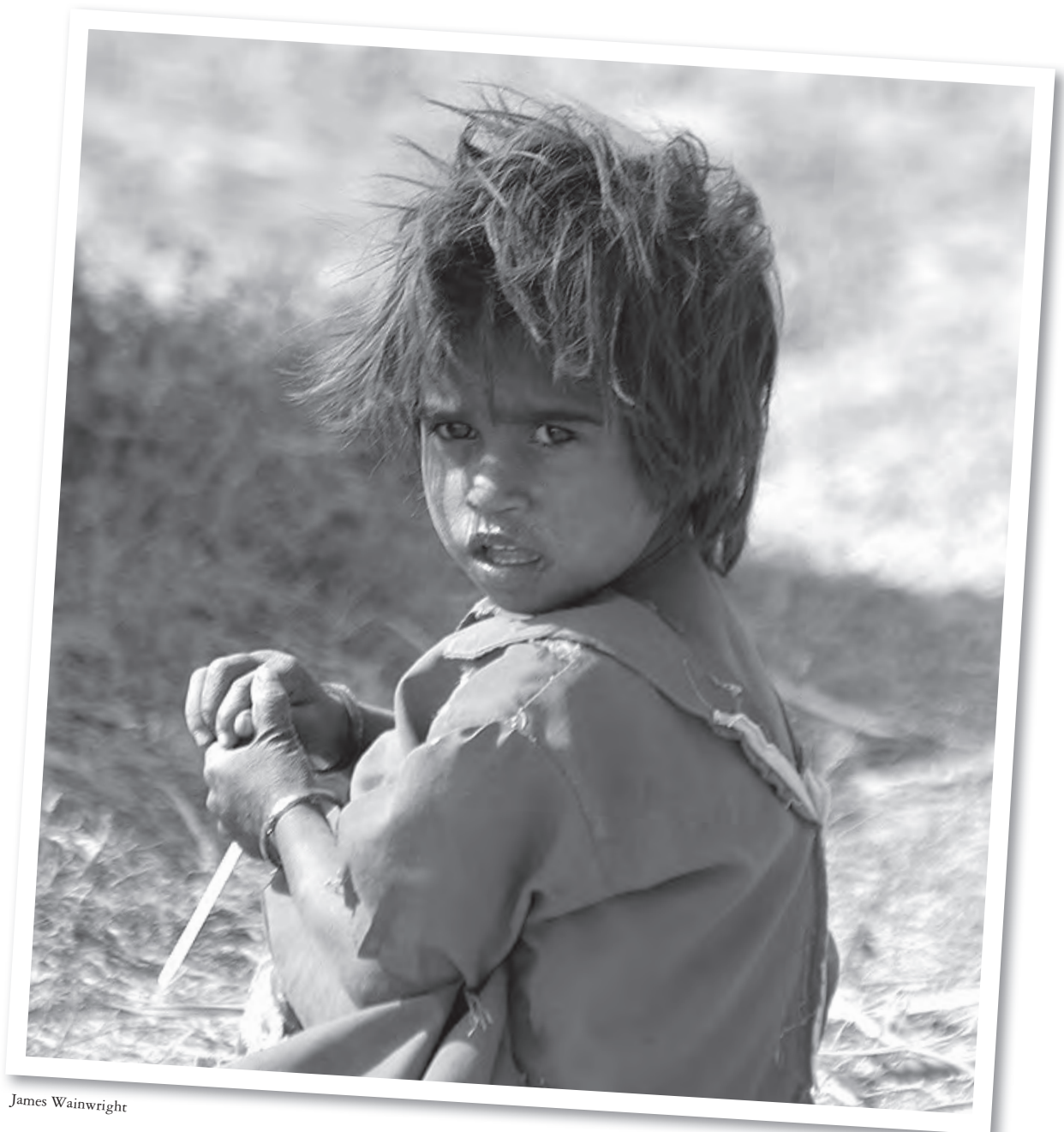
- Introduce the readers to some of the laws that come into play when addressing children and housing;
- Suggest strategies (based on activists' experiences), both short and long term to protect and fulfil children's right to adequate housing

No right is complete and independent in itself. Each right is connected to the other. For example, a child's ability to access his/her right to education is also dependent on how healthy he/she is, or whether he/she has enough food to eat. Recognition of this interdependence of rights is known as the 'indivisibility of rights' approach.

How to use this handbook?

The Handbook is divided into two main sections.

Section One is primarily an introduction to the area of children and housing and makes the important link between the right to adequate housing and child rights.



James Wainwright

Section One includes:

- A brief introduction to child rights as well as to the need to focus on children as a special category.
- A discussion on why we need to focus on children's right to adequate housing.
- A detailed explanation of the human right to adequate housing with a view to ensuring that the right is understood in its totality.
- An examination of the Indian legal situation vis-à-vis the right to adequate housing and as well as of relevant international legal instruments that India has ratified.
- Different ways in which housing rights are violated and how these impact children's rights to survival, protection and development.
- How to identify a housing rights violation in the context of children.
- Broad strategies that may be used and adapted to suit particular situations, to advocate for children's right to adequate housing.

Section Two examines some specific situations in which children's right to adequate housing may be under threat or being violated. The themes have been selected in order to make clear that children's right to adequate housing can be violated not only in the most obvious situations like in the case of street children or those who have been forcibly evicted, but also in cases of natural disasters, conflict situations as well as in custodial institutions.

- Each thematic part of this section discusses in detail the ways in which children's right to adequate housing is brought under threat or is violated in the particular situation. The ensuing impact on children's various other rights are also discussed.
- Relevant laws and policies are introduced in brief in each of the segments.
- Each thematic part contains some strategies based on the experience of various child rights, housing rights and human rights groups that can protect children from housing rights and other rights violations.
- Each thematic part also includes a list of relevant authorities that could be held responsible in case of a violation in the case of children.

Given that situations of housing rights violations are often linked, for example, a homeless child may have been a victim of forced evictions earlier, or a child living in a custodial institution may have earlier been a homeless child, we feel that it is extremely important to read this handbook in its totality for a complete picture of some of the complexities involved. However, if this is not possible, we request that you read Section One before using the specific thematic part.

I

Section I

““The cancer of homelessness, owes its genesis to unplanned and callous demolitions. The more insensitive the level of demolitions, without a rehabilitation plan, the greater the level of homelessness in the city.”

“Yamuna Gently Weeps” a book on Yamuna Pushta slum demolitions by Ruzbeh N. Bharucha



Why must we focus on children's rights?

Although children constitute close to half the world's population, they are the most vulnerable and marginalized in our society.

Children are rarely seen as individuals with rights and decision-making capabilities, and are treated as dependents, or extensions of adults. As a result children's voices mostly go unheard.

Children's voices are also silenced by norms of culture and tradition, which make them highly susceptible to negligence and abuse.

The fact that children lack political voice and do not form a 'political constituency' further contributes to their marginalization.

Due to their particular vulnerable position, children are not able to effectively report or resist a violation of their rights.

Child rights violations can often threaten the child's chances of survival or can severely stunt the child's development over the long-term.

How and where are children's rights guaranteed?

Every child has a right to childhood and therefore a right to **survival**, **protection**, **development** and **participation**. Guarantees for children's rights, like all other human rights, may be found in:

a) International Human Rights Law:

This includes the Universal Declaration of Human Rights (UDHR) (1948), the International Covenant on Civil and Political Rights (ICCPR) (1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966). It also includes international treaties on specific groups of people like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965) and the United Nations Convention on the Rights of the Child (UNCRC) (1989).

Adoption of International Law¹

International law can be adopted by signing and then ratifying the particular covenant or convention.

Signing is the first step towards adoption of an international covenant or treaty. By signing, a State agrees to the contents of the law; however, it does not make it binding upon the State to make the international law a part of its national law.

The next step after signing is ratifying. This is when a State agrees to make the particular covenant or convention a part of its national law and also abide internationally to various commitments including periodical reporting to a specified monitoring body. Therefore, India, by ratifying the UN Convention on the Rights of the Child, has agreed to make it a part of its domestic law and also to report on situation on child rights every five years to the UN Committee on Child Rights.

¹ Adapted from 'Stop Child Trafficking: A Handbook for Parliamentarians', Campaign Against Child Trafficking, New Delhi 2005.

These covenants and treaties are legally binding if they are ratified by the particular State and the State is deemed to be guilty of violating the human rights of its citizens if the standards mentioned in the ratified covenants or conventions are not met with.

Apart from the legally binding instruments mentioned above, there exist several internationally accepted declarations, resolutions and guidelines. These instruments have great moral authority and can be used very effectively while advocating for human rights.

b) National Constitutions

In several cases, the Constitution of a country is where one can find recognition of various human rights that include children's rights. For instance, the Constitution of India in its chapter on fundamental rights, in Article 21 (a), recognises the right of all children between the ages of six and 14 to free and compulsory education.²

c) Specific Legislation

Specific national and state laws also recognize and protect a variety of children's rights. These include the Juvenile Justice (Care and Protection of Children) Act 2000, as Amended in 2006, The Child Labour (Prohibition and Regulations) Act (1986) and the Immoral Traffic (Prevention) Act (1956 – Amended in 1986)

d) Legal Pronouncements

Children's rights, like other human rights, are also recognized through judgements of the Supreme Court of India and the High Court of various states. For instance, before the 86th Constitutional Amendment that allowed for the insertion of Article 21A in the chapter on fundamental rights, the right to education had been recognized as a fundamental right by the *Supreme Court of India in Unnikrishnan vs. State of Andhra Pradesh*.³



2 See Annex 1
3 (1993) 1 SCC 645

What are children's rights?

Even though all human rights apply equally and fully to all human beings irrespective of age, gender, race, ethnicity, economic and social standing, sexual orientation, etc., children's rights have been articulated separately in the United Nations Convention on the Rights of the Child (UNCRC) in order to protect the interests of the child and make sure that children's rights are not sacrificed in the interests of the larger community.

The UNCRC text can be divided in three parts⁴

- Key Principles
 - Respect for best interests of the child as a primary consideration.
 - The right of children to express their views freely in all matters affecting them.
 - The right of all children to enjoy all rights in the UNCRC without discrimination of any kind.
- Key Principles
 - The definition of children as all persons below the age of 18 unless the legal age of majority in the country is lower.
 - Civil rights and freedoms, including the right to a name and nationality, to freedom of expression, thought and association, access to information, and the right not to be subjected to torture.
 - Family environment and alternative care, including the right to live with parents, to be reunited with parents if separated from them and to the provision of appropriate alternative care where necessary.
 - Basic health and welfare, including the rights of disabled children, the rights to healthcare, social security, child care services and an adequate standard of living.
 - Education and cultural activities, including the right to education, the right to play, leisure and participation in cultural life and the arts.
 - Special protection measures covering the rights of refugee children, children in situations of armed conflict, children in juvenile justice homes, children deprived of their liberty and children suffering economic, sexual or other exploitation.
- Ways in which these rights can be monitored

The UNCRC establishes ways in which the implementation of the Convention can be monitored. This includes the setting up of a Committee on the Rights of the Child which receives initial reports from countries two years after ratification and every five years thereafter on progress made in ensuring respect of, and fulfilling the rights of the child. UN agencies and NGOs are also invited to submit information to the Committee on the child rights situation in the country.

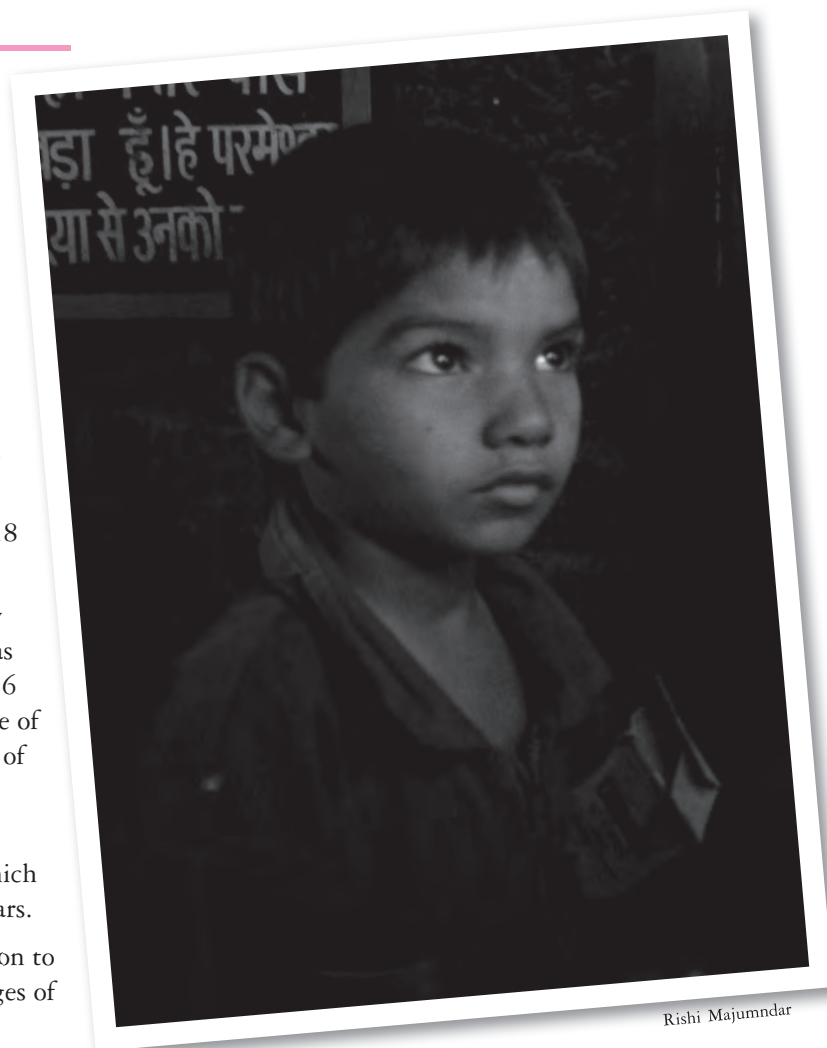
⁴ From Save the Children 1999 reproduced in Enakshi Ganguly Thukral ed. 'Children in Globalising India, Challenging our Conscience', HAQ: Centre for Child Rights, New Delhi 2002

Who is a child?

The UNCRC, ratified by India in 1992, defines a child to mean every human being who has not attained the age of eighteen years, unless majority is attained earlier under a national law.

Indian laws, however, have differing definitions of the child and the age varies according to context.⁵

- The general age of majority (to vote or to hold a bank account or execute a contract) is 18 years.
- For purpose of marriage, the age of majority is 18 for a girl and 21 for a boy.
- The age of sexual consent or the age limit below which sexual intercourse cannot be understood as consensual and is therefore taken to be rape, is 16 years for girls. In case the girl is married, the age of sexual consent is 15 years. There is no such age of consent for boys.
- For employment in factories and 'areas of hazardous employment', the age limit below which employment of children is illegal is set at 14 years.
- Similarly, 'free and compulsory primary education to all' is applicable only to children between the ages of 6 and 14 years.
- Under the Juvenile Justice (Care and Protection) Act, 2000 (as Amended by The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006), applicable in cases where children may be accused or convicted of committing a crime or deemed to be in need of care and protection, the definition of the child includes all persons below the age of 18 years.



Rishi Majumdar

For purposes of this handbook, we will use the definition as under the Juvenile Justice Act and the UNCRC.

All children are not equal

While generally speaking, children form a highly vulnerable category, it is important to note that all children are not equal. Children belonging to vulnerable and disadvantaged groups are even more vulnerable to numerous rights violations. This vulnerability may be a consequence of their social, economic or ethnic background, mental or physical ability or where they live, and as such, they need special attention. Their existing vulnerable situation becomes particularly more disadvantaged in situations of stress, caused by forced evictions or emergency situations.

⁵ This inconsistency can be problematic. Children may find themselves doubly disadvantaged in certain circumstances. For instance, on the one hand, 15-year-old children are not protected with regard to hazardous conditions of work, nor can they access free and compulsory education and on the other hand they do not have the same rights as adults with regard to participation and choosing their representatives in government.

The following are some categories of children who are more vulnerable to rights violations and abuse than others:

- Girl children
- Disabled children
- Children suffering from HIV AIDS
- Economically disadvantaged children
- Street or homeless children
- Dalit children
- Adivasi children
- Children of persons belonging to minority communities
- Children of prostitutes
- Children of migrant communities
- Children in juvenile detention homes or other institutions
- Children affected by natural disasters

This, however, is not a comprehensive list. The vulnerability of any socio-economic group depends upon the particular social, cultural and political situation. It is also important to note that many children, like adults, suffer from multiple disadvantages, which increase their vulnerability to rights violations. **The girl child in all categories is particularly disadvantaged by the inherent gender bias that continues to exist in our society.** For instance, a homeless disabled girl child can be far more vulnerable to a violation of her rights than an adivasi boy.

Why do we need to Advocate for Children's Right to Adequate Housing?

Adequate housing must not be understood just as a NEED but as a RIGHT, which includes within it the physical, material aspect of space along with the emotional, psychological and spiritual dimensions.

Justice Rajinder Sachar who was appointed Special Rapporteur on Adequate Housing by the Sub Commission on Prevention of Discrimination and Protection of Minorities in 1992, in his first working paper observed that "in an inadequate housing environment, children were 40-50 times more likely to die before reaching the age of five"⁶ He stressed the indivisible nature of survival, health, environmental conditions and housing. He confirmed the need to view housing rights within a holistic and interdependent framework which transcends the outdated 'four walls and a roof' view of housing.

- More than one-third of the citizens of this country are children.
- Childhood is precious and must be protected for the full development of an individual. The home and the immediate environment around the house is the ideal nurturing ground for children.
- Children, much more than adults, tend to spend a majority of their time in and around the house, their needs and rights must therefore be taken into account when the right to adequate housing is being articulated and advocated.
- The impact of a housing rights violation differs in nature and proportion in the case of adults and children; the promotion, protection and fulfillment of the right to adequate housing for adults does not automatically extend to the children of the community.

⁶ E/CN.4/Sub.2/1992/15

- Children have special needs (especially in the case of housing) that often get subsumed in the needs and concerns of adults.
- Children need protection, support and encouragement for proper development in a safe and peaceful environment. Areas of violent conflict, social unrest, insecure and inadequate housing and living conditions, high criminality or alienation cannot provide this.
- Housing rights are integral to the fulfilment of other basic rights of the child. The right of the child to health, education, participation, physical and intellectual development, security and even the right to life is closely linked to the immediate environment. 'Adequate' housing is of particular importance for children's growth and development, and the child's self-confidence and sense of identity depend greatly on his/her access to a secure place to live in peace and dignity.
- Conversely the absence of a secure place to live can lead to deprivation of more than one right of the child, such as the right to health, education, protection from economic exploitation and abuse and even the right to a legal identity.
- A holistic understanding of the right to adequate housing not only brings out the important role of adequate housing in the protection and development of a child but also its significant contribution in reducing a child's vulnerability to other rights violations.



Zeeshan

What is the Right to Adequate Housing?

Adequate shelter means more than a roof over one's head. It also means adequate privacy; adequate space; physical accessibility; adequate security; security of tenure; structural stability and durability; adequate lighting; heating and ventilation; adequate basic infrastructure, such as water supply, sanitation and waste management facilities; suitable environmental and health related factors; and adequate and accessible location with regard to work and basic facilities: all of which should be at an affordable cost. Adequacy should be determined with people concerned bearing in mind the prospect for gradual development.....

(Para 60.The Habitat Agenda.1996)⁷

When we commonly refer to housing, we use the terms 'house' and 'shelter' interchangeably, thus limiting our understanding of housing to a structure or a building. From a human rights perspective, however, the understanding of housing and more significantly what constitutes 'adequate housing' expands beyond the structure of a house. It includes all conditions that enable a human being to live in a protective environment, and to exercise their other rights. This understanding finds reflection in international human rights legal instruments and forms the basis of today's understanding of right to adequate housing that every child in this country must enjoy.

⁷ ibid.

The right to adequate housing has been recognized in international human rights law as an integral part of the right to an adequate standard of living, ever since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948.

Detailed articulation of the right to adequate housing can be found in the International Covenant on Economic Social and Cultural Rights (ICESCR), which has been ratified by India in 1979. Article 11 (1) of ICESCR states that:

“State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions.”

Elaboration of the right, what exactly it means, its core components and the corresponding duties of States is articulated by a group of international experts who form the Committee on Economic Social and Cultural Rights, through a series of ‘General Comments’.⁸ For instance **General Comment 3** of the Committee lays down the nature of State obligations and allows for **progressive realization** of all economic social and cultural rights, but also recognizes that **deliberate retrogression** is a violation. Therefore in the case of the right to adequate housing, this means that while the State is allowed, through various laws and policies, over a period of time, to fulfil the right to adequate housing and that this fulfilment need not be immediate, any act of forced eviction especially without adequate rehabilitation would be considered a violation of the right.

General Comment 4 of the Committee entitled “The right to adequate housing,” sets out minimum core obligations of the State in the context of the right.

These are as follows:

1. **Legal security of tenure** – There should be protection against forced eviction and harassment. People must have titles or legal leases to the land and houses in which they live.
2. **Availability of services, materials, facilities and infrastructure** – Facilities essential to health, security, comfort and nutrition must be made available. These facilities include but are not limited to, safe drinking water, sanitation and washing facilities and energy for cooking, heating and lighting.
3. **Affordability** – Expenditures for housing should be commensurate with income levels, as basic needs should not be compromised. As a result, it is the duty of the State to provide low cost housing and make loans available for the economically weaker sections of the society.
4. **Habitability** – There should be adequate space and protection from the elements. Conditions conducive to disease and structural hazards should be eliminated.
5. **Accessibility** – All persons, without discrimination, should have access to adequate housing.
6. **Location** – Adequate housing must allow for access to employment options, healthcare, schools and other social services. There must not be excessive financial demands on the household with respect to transportation.

⁸ The Various UN Committee set up for the different Conventions publish their interpretation of the content of human rights provisions, in the form of General Comments on thematic issues. These are important UN documents.

General Comment 7 of the Committee recognizes forced eviction as a human rights violation and notes that children among other vulnerable groups suffer disproportionately from the practice of forced evictions. Paragraph 13 of the General Comment clearly lays down that States *must ensure that prior to carrying out any evictions, and particularly those involving large groups, all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders.* States parties are also required to ensure that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.

The General Comment lays down that the procedural protections which should be applied in relation to forced evictions must include⁹ :

- (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.

Further General Comment 7 categorically states that evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

Legal Provisions with Regard to the Right to Adequate Housing in Indian Law

Does Indian Law guarantee right to housing?

There is no explicit mention of the right to adequate housing in the Indian Constitution nor is there any specific legislation ensuring housing rights. This, however, does not mean that the right to adequate housing is not recognized in the Indian context. There are several laws related to housing and land rights which essentially deal with processes through which land maybe acquired, evictions may take place and determine if any compensation or rehabilitation is due to persons whose homes and lands have been acquired. Apart from specific laws, there also exist several Supreme Court judgments that have defined housing rights. These orders were passed at different points of time, particularly when persons were being forcibly evicted from their place of residence.

⁹ See paragraphs 11 to 16 of General Comment 7 of the Committee on Economic, Social and Cultural Rights.

.... the right to life implies a right to life of dignity, which is impossible without basic necessities such as food, clothing and shelter....

Supreme Court of India in the *Olga Tellis vs Bombay Municipal Corporation*, Decided on July 10, 1985

The law laid down by the Supreme Court of India in several cases including the landmark *Francis Coralie*¹⁰ and *Olga Tellis*¹¹ cases has recognized the right to adequate housing through a broad interpretation of the right to life as enshrined in Article 21 of the Indian Constitution. The Court has held that the right to life implies a right to life of dignity, which is impossible without basic necessities such as food, clothing and shelter. In the *Olga Tellis* case, the Court additionally laid down that no individual can be evicted from her home without the due process of law. In 1990s there were number of judgements that uphold the *Olga Tellis* judgement such as *Shantisar Builders, V Narayan, K. Totame, Chameli Singh V state of UP and Ahmedabad Municipal Corporation V. Nawas Khan Gules Khan*¹²

Laws such as the Land Acquisition Act 1894 and the Slum Areas (Improvement and Clearance) Act, 1956, which are used to evict people from their homes and lands, also provide a small space for legal remedy and compensation and/or rehabilitation to the affected people. The National Rehabilitation Policy 2004, although far from adequate, provides relief and rehabilitation both to owners and occupiers of the land who have been displaced by mega projects. The Government has introduced the Rehabilitation and Resettlement Bill, 2007 in the Lok Sabha (Bill No. 98 of 2007).

In the absence of a detailed articulation of the right to adequate housing in Indian law, the right as articulated in Article 11 (1) of the ICESCR can be used in the domestic context. In fact Article 51 (c) of the Indian Constitution provides for the adoption of international instruments in the domestic legal framework and adherence to international commitments.

Draft National Slum Policy 2001

India's Draft National Slum Policy 2001 is one of the rare policy documents that reflect to some extent the concern for children's needs and rights.

In terms of service delivery, the Draft Policy promotes a 'community based approach' where the active involvement of the community at every stage from design to implementation and maintenance is sought. It also states the need to 'target' women and children directly in the design and implementation of physical infrastructure and delivery of social and economic services.

Regarding education, the Draft Policy states that attention needs to be focused on reducing drop out rates in school particularly for girl children and in supplementing formal school education with coaching assistance. It places a responsibility on urban local bodies to identify all informal settlements that have inadequate pre-school and primary school facilities and recommends that funds should then be made available under the National Slum Development Plan (NSDP) and other departments and priority should be given to the most under-served areas. It also states that urban local bodies should actively promote pre-schools/crèches and non-formal education focusing on literacy and vocational training. The Draft Policy promotes education incentive schemes and lays strong emphasis on developing literacy skills especially among women and children and makes urban local bodies responsible for providing day crèche facilities in order to enable women to participate in the labour market.

The Draft Policy states that urban local bodies should be active partners in implementing the International Convention on the Rights of the Child and entrusts these bodies with taking action against use of child labour through fines, penalties and the withdrawal of licenses.

10 Francis Coralie v. The Union Territory of Delhi and others (1981) 1 SCC 608

11 Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180, 193.

12 Jayna Kothari, A Right to Adequate housing? India Together Wednesday 02 July 2008. www.indiatogether.org/opinions/rhousing02.htm

What does the Right to Adequate Housing Mean in Practical Terms?

From the above articulation of the right to adequate housing in international and Indian law the right can be understood as the following:

1. The right to adequate housing goes beyond understanding housing as merely four walls and a roof. Since 'adequate' is the operative word, the right takes a **holistic approach and is intrinsically linked to other human rights.**
2. General Comment 3 and General Comment 7 of the Committee on Economic, Social and Cultural Rights together articulate State obligations vis-à-vis the right to adequate housing. General Comment 7 places an **obligation on the State to minimize forced eviction and provide rehabilitation to those evicted.** General Comment 3 requires State parties to **progressively bring into force laws and policies that will provide and protect the right to adequate housing for all.**
3. As per General Comment 4 the right to adequate housing includes a **duty on the State to provide to all basic amenities including access to public services such as electricity, water, sanitation, etc.**
4. Since 'location' is integral to the right to adequate housing in practical terms it means **that housing cannot be located at a great distance from essential services such as ration shops, health centres, schools and places of work**
5. The 'affordability' component of the right places a duty on the state to **provide low cost housing or subsidies, without which the provision of housing to marginalized communities cannot be deemed as adequate.**
6. Cultural adequacy as a component of the right provides for the preservation of the culture of the community. It also ensures that **housing cannot be deemed to be adequate if it does not respect the cultural aspirations or does not conform to the cultural needs of the community.** For instance if housing for pastoral communities does not provide for space for their cattle it cannot be deemed as adequate.
7. Additionally, the articulations of the Supreme Court of India regarding the right to adequate housing ensures that **no person can be evicted from her home at will and without due procedure of the law.**

Given the indivisibility of rights, the following key components are important for the articulation of this right to be adequate

1. **Personal Security and Privacy** – For housing to be deemed as adequate it has to be free from violence both from individuals as well as from the state. A violent home cannot be deemed to fulfil the right to adequate housing. Privacy is also considered an essential component of housing as a house that does not provide adequate privacy especially for girls and women increases their vulnerability to gender based violence and other human rights violations.



2. **Access to information and opportunities for participation** – For housing to be adequate and to protect and fulfil the needs of all, information and space for participation of the entire community including women and children is crucial. Rehabilitation programmes and slum improvement plans are often found to be highly inadequate when there has not been informed participation of all members of the community.

Right to Adequate Housing and Child Rights

The right to adequate housing, like all other human rights, applies to all human beings alike. Given the special needs and concerns regarding children the U.N. Convention on the Right of the Child (UNCRC) also provides for the protection and promotion of this right particularly for children.

While all articles in the UNCRC are indivisible and cannot be read independently of one another, the two that are of particular relevance vis-à-vis children's right to adequate housing are:

Article 16 (1)

1. No child shall be subject to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

When does a Violation of the Right to adequate Housing Occur?

As in the case of all human rights, the duty of the State is to respect, protect and fulfil the right to adequate housing of all. It is therefore important to remember that a violation of the right to adequate housing occurs not only through acts of commission, i.e. forced eviction, but also through acts of omission like the absence of or non-implementation of housing policies and plans.

Some of the situations where we can say that the right to adequate housing has been violated are given below:

1. When there is a forced eviction or involuntary displacement of an individual or a community without due process of law or when those evicted or displaced are not given the right to access courts, or where adequate rehabilitation is not provided.

2. When rehabilitation is not as per the principles of the right to adequate housing.
3. When the State does not take effective steps through specific policies and programmes to ensure that the right to adequate housing is available for all. Such programmes would include implementation of slum improvement plans, the provision of low cost housing, or making available soft loans for people to access their right.
4. When State housing and land policies directly or indirectly discriminate against marginalized groups such as children, women, the elderly, the disabled and those belonging to disadvantaged communities such as dalits, adivasis and religious minorities.
5. When the state does not take the necessary steps to protect the right to adequate housing from forces of globalization and development. This includes protecting vulnerable groups like those belonging to adivasi, dalit or poor communities from land alienation caused by increased pressure on land.
6. When the state does not act to protect the right to adequate housing, and effectively put an end to prejudice, harassment and eviction of vulnerable communities by other more powerful communities as seen in the case of dalit, adivasi and nomadic communities as well as in the case of persons belonging to de-notified tribes.

How does the Right to Adequate Housing Affect Children's Rights?

The right to adequate housing or its violation can affect children in multiple ways, ultimately impacting on their right to childhood. The violation of children's right to adequate housing violates their basic rights to survival, protection, development and participation. Although it is not possible to make water-tight categories and we recognize that one kind of housing rights violation can affect children's rights in multiple ways, below is an attempt to present housing rights violations according to their impacts on children's rights to survival, protection, and development and participation.

Survival

1. Urban renewal/beautification projects, mega development projects and projects on nature and wildlife conservation are one of the biggest causes of forced eviction and involuntary displacement. In most cases, it is the most marginalized sections of our society, mainly dalit and adivasi communities, that are displaced. Forced eviction often results in the loss of assets and access to natural resources. This in turn leads to further impoverishment, thus exposing children to malnutrition and starvation, sometimes leading to death, as seen in the case of starvation deaths of more than 2000 children around the Melghat Tiger Reserve in Maharashtra.
2. In cases of a forced eviction children are often exposed to violence and many are physically hurt in the process.
3. The sudden loss of home and community can have a lasting impact both on the child's psychological and physical health. At least two children succumbed to harsh weather conditions in the Mumbai evictions of December 2004.
4. Poor living conditions at resettlement colonies also threaten the child's right to survival. Within few months of resettlement at Bawana in Delhi, 12 children of a community died due to water-borne diseases caused by lack of clean drinking water, proper sanitation and solid waste management, compounded by lack of access to timely medical attention.



Manmeet Gamber

5. Discrimination based on descent – including caste, community and religion - often denies children of marginalized communities the access to secure living conditions and basic services including timely health care. Forced to live on the fringes of society, the children belonging to dalit, adivasi and nomadic communities among others, are often victims of abuse and violence.

Protection

1. Lack of space and overcrowding can adversely impact upon children's rights to privacy and personal security. Slum-like situations where adults and children, men and women are crammed in a small place and are forced to live and sleep together, where there is not even enough privacy to change ones' clothes, increase children's vulnerability to physical and sexual abuse manifold.
2. Economic and social distress caused by the loss of homes whether due to involuntary displacement or whether as a result of natural disasters not only makes children more vulnerable to trafficking but is also seen to promote under age marriages, especially for girl children.
3. If evicted families are not adequately rehabilitated many find themselves on the streets. Children of such families are more vulnerable than others to physical and sexual abuse apart from other forms of exploitation and deprivation of their rights.
4. Homeless children living under bridges, on pavements or in abandoned structures are vulnerable to a variety of abuses including physical and sexual abuse both from common people as well as from the police. Of these girl children are obviously more vulnerable. Further, these children are likely to be criminalized by vagrancy laws.

Development and Participation

1. Inadequate facilities in housing settlements like the lack of potable water, adequate toilet and sanitation facilities and the absence of proper solid waste management has negative impacts on the health of these already marginalized children.
2. Lack of legal security of tenure - a condition in most slums and unauthorized colonies, also denies the family access to public services such as electricity, ration shops and access to government schools, thus denying children living in such conditions their right to both development and participation
3. One of the most common aspects of inadequate rehabilitation is the sharp decline in the incomes and the standards of living of the affected families. Many children belonging to evicted families are also forced to drop out of school because of a change in location and falling standards of living caused by the eviction.
5. A drop in the standard of living invariably results in a fall in nutritional intake severely affecting children, especially the girl child.
6. Fall in the incomes of families and shrinking livelihood options often result in children being forced to work in factories, workshops, etc. Loss of community and the economic pressure that forces all adults of the family to find jobs also results in children having to look after younger siblings, thus robbing them of their childhood.

7. Homelessness denies children access to their other rights including the right to health and health care and the right to food, leading to their increased vulnerability to disease, illness and starvation.
8. Their particular situation often denies them the right to education, thus severely impacting on their rights to development and participation.
9. Children are one of the worst sufferers in cases of natural disasters such as cyclones, earthquakes and the recent tsunami. Loss of home increases children's sense of insecurity and if they are not adequately and quickly rehabilitated, child victims of disasters become vulnerable to numerous rights violations. The loss of a home also leaves an indelible mark on their psychological health.

Scope of the Right to Adequate Housing with Reference to Children

"Adequate shelter must be recognized as an important component of the particular care and assistance to which children and their families, as well as children living outside or without families, have a right. Special attention must be given to children in difficult circumstances."

(Para 94. Habitat Agenda. 1996.)¹³



Shubhangi Athalye

As the right to adequate housing extends beyond the mere structure of the house, principles of the right apply not only to housing settlements but also to the following:

1. Night shelters for homeless children.
2. Hostels and tribal ashrams (whether run by private parties or by the State).
3. Juvenile homes, children's homes, observation homes or any other remand institutions.
4. Crèches.

What Categories of Children could be Deemed as Victims of Human Rights Violations?

In order to advocate for the protection and fulfilment of children's right to adequate housing we need to be able to identify a housing rights violation not merely in its most obvious but also in the more subtle and insidious forms. Below are some categories of children whose right to adequate housing can be deemed to be violated.

1. Homeless children.
2. Children who are victims of a forced eviction.
3. Children who have lost their homes in natural disasters and have not been adequately rehabilitated.

¹³ op. cit. The Istanbul Declaration and Habitat Agenda. United Nations Conference on Human Settlements (Habitat II). Istanbul, Turkey, 3-14 June 1996

4. Children living in tents or other forms of makeshift housing.
5. Children living in overcrowded houses or dormitories.
6. Children living in houses that lack adequate supply of essential services such as electricity, potable water and sanitation facilities.
7. Children living in houses that are at a great distance from schools, ration shops and health centres.
8. Children living in areas that do not have adequate transport facilities to take them to schools, health care centres, etc.
9. Disabled children whose houses and surrounding areas do not cater to their specific needs.
10. Children living in a violent environment or in violent or abusive situations within the home.
11. Children of migrant and/or manual labour who accompany their parents to their work sites and due to the absence of crèches are forced to spend the time under hazardous circumstances.
12. Children in crèches that do not comply with the standards of the right to adequate housing.
13. Children in dormitories and hostels that do not comply with the standards of the right to adequate housing.
14. Children in juvenile detention homes that do not comply with the standards of the right to adequate housing.

In the following sections of this Handbook, we will look specifically at some of the above mentioned categories to understand housing rights violations in their specific contexts, available laws and policies. We shall also explore strategies that will contribute towards the promotion, protection and fulfilment of children's right to adequate housing.

Some General Strategies to Address Children and Housing Rights Violations

1. Enumerate, district-wise, all children (including collection of disaggregated data on the various categories of vulnerable children mentioned above) suffering from the lack of adequate housing.
2. Ensure that all legislation, programmes, policies from the local to the national level are sensitive and take into account children's rights to adequate housing and are in compliance with India's constitutional and international commitments especially to the UNCRC.
3. Critically analyze all existing legislations, programmes and policies and ensure that they comply with India's international human rights commitments and adhere to standards laid down in various international human rights treaties including the ICCPR, ICESCR, CEDAW and CERD.
4. Lobby for issues concerning children's right to adequate housing to feature on political party manifestos as well as programmes of action of ruling state and central governments.
5. Make effective use of the media to highlight children and housing rights violations
6. In certain cases (conditions in juvenile homes, post-disaster/post-conflict rehabilitation, etc.) seeking judicial intervention by using public interest litigation may be an option.

7. Ensure that the newly formed National Commission for the Protection of Child Rights focuses on children's right to adequate housing.
8. Ensure that monitoring bodies like the National Human Rights Commission, National Commission for Women, National Commission for Scheduled Tribes, National Commission for Scheduled Castes, National Commission for Minorities and the National Commission for the Protection of Children (when it comes into force) are kept informed of developments so that their involvement can be sought when required.¹⁴ Involvement of the National Commissions can be sought through submission of written complaints either in their stated format or in the form of a letter in any of the Indian languages or in English.
9. Seek the involvement of state level commissions where possible.

At the International Level ¹⁵

1. Invite the involvement and monitoring of United Nations Special Procedures like Special Rapporteurs on the Right to Adequate Housing, on the Sale of Children, Child Prostitution and Child Pornography, on Violence against Women, on Right to Education, on the Right to Food, Representative of the Secretary General on Internally Displaced People, etc. Intervention of Special Rapporteurs can be sought by sending them information on the situation. The particular Special Rapporteur may issue a public statement or communicate his/her concern to the concerned government and seek their response. Special Rapporteurs also undertake country missions where, based upon information received, they can raise concerns regarding children and housing with the concerned government, thus drawing international attention to the issue.
2. Ensure that the State submits the required periodic reports to the UN Committee on the Rights of the Child and that there is adequate reporting on children and housing.
3. Participate in the parallel reporting process at the UN Committee on the Rights of the Child and ensure that cases of violations of children's right to adequate housing are reported.¹⁶
4. Widely publicize the Concluding Observations of the Committee in order to ensure that there is pressure on the government to implement their recommendations. For instance, after the last report was submitted, several important steps have been taken by the government to further child rights in India. These include the National Charter for Children 2003 and the National Plan of Action 2005.¹⁷

Who in the Government can be held Responsible

Apart from the Prime Minister, at the national level, children's issues are primarily the responsibility of the Union Ministry for Women and Child Development. Depending upon the particular context, the following ministries could also be held responsible and their intervention sought:

1. Ministry for Urban Affairs.

¹⁴ See Annexure II for contact details of various National Commissions

¹⁵ For more information on advocacy at the international level please consult 'Children and Right to Adequate Housing: A Guide to International Legal Resources', HAQ Centre for Child Rights and Habitat International Coalition, New Delhi 2002.

¹⁶ See Annex III for information on the Committee on the Rights of the Child. Also see IACR Bulletin of 21/22 January 2004 in 'Status of Children in India Inc', Enakshi Ganguly Thukral, HAQ Centre for Child Rights, New Delhi 2005 for insight into the reporting process.

¹⁷ See 'Status of Children in India Inc', Enakshi Ganguly Thukral, HAQ Centre for Child Rights, New Delhi 2005

2. Ministry for Rural Development.
3. Ministry of Environment and Forests.
4. Ministry for Tribal Affairs.
5. Ministry for Social Justice and Empowerment.
6. Ministry for Water Resources.



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Section II

Forced Evictions, Lack of Adequate Rehabilitation and Children's Rights

... Forced evictions, another violation of children's housing rights, have been shown to be comparable to war in terms of the psychological trauma suffered by the affected children. Violations like these are often at the root of childhood vulnerability and exposure to violence.

Housing Rights Situation of World's Children Abysmal Says New Report, 20 September 2006





The demolition of houses and the forced eviction of entire communities from their homes and lands, a classic example of the violation of the right to adequate housing, has unfortunately become an everyday phenomenon in our fast ‘developing’ world. A single ‘eviction drive’ can involve tens of thousands of people and sometimes even lakhs. **It is important to remember that in every eviction almost half of all the affected people are children.**



yossi05

Large-scale forced evictions often are a result of:

1. Construction of large infrastructure and development projects such as ports, big dams, mines, highways, airports, etc.
2. Wildlife protection and nature conservation projects.
3. City beautification, urban renewal and urban transport and infrastructure development projects.

The large-scale displacement resulting from the above mentioned projects is often characterized by:

1. Lack of information with communities on plans or reasons for their eviction and plans for rehabilitation.
2. Lack of opportunity for affected communities to participate in the decision making processes concerning their eviction and rehabilitation.
3. Absence of any effort to gain the prior informed consent of affected communities for relocation and resettlement.
4. Flawed surveys resulting in inaccurate data on the number of people to be affected as well as undervaluing of their losses. In most cases there are huge differences in the official estimates of people to be affected and the estimates of the community and organizations working with the community.
5. There is often a near complete disregard for due process of law such as, in several cases, adequate notice is not given to the evictees. In some cases they are denied adequate opportunity to legally represent themselves, as seen in the case of the Yamuna Pushta evictions in Delhi.
6. Dissent and an unwillingness to move are often met with force and violence from the police and other para-military forces sometimes injuring some of the evictees including children.

Impact of Forced Evictions on Children

“In accordance with Article 27 of the Convention, the Committee recommends that the State reinforce its efforts to provide support and material to the economically disadvantaged families and to guarantee the right of children to an adequate standard of living. In light of its previous recommendations (ibid., para 53), the Committee further recommends that the State party prevent any occurrence of forced relocation, displacement, and other types of involuntary population movements.”¹⁸

While entire communities suffer innumerable material and non-material losses as a result of forced evictions or involuntary displacement, children are among the worst sufferers. Some of the impacts on children are as follows:

¹⁸ CRC/C/15/Add.228 30 January 2004

Before eviction

The standard operating procedure for administrations to assist in vacating an area for 'development' purposes is to close down essential services like the subsidized food shops, primary health centres, schools, post offices, transport services and finally water and electricity supply. This is particularly serious as rehabilitation sites are built often months if not years after an area is declared to be vacated. As a result, the long gap between declaration of eviction and rehabilitation results in the denial of a number of rights including the rights to food, water, health and education. This has a severe impact on children's rights to survival and development.

In a survey conducted in 2005, the Punarvasan Sangharsh Samiti found that in the Akkalkuwa block - one of the areas affected by the Sardar Sarovar dam - 98 children had died. Of these, 71 children were malnourished, and 45 children were found to be in the second stage of malnourishment.¹⁹

During eviction

1. The process of eviction is often a traumatic one for children as most of them are unable to understand and gauge the full implications of the sudden appearance of police personnel and bulldozers around their homes. The experience of having one's home torn down, which is often accompanied with an increased vulnerability of the family to violence, can leave an indelible mark on the psychological health of the child. Children also often become victims of the violence that may occur during the process of forced eviction.

Fifteen-year-old Rehmal Punya Vasave of village Surung in the Sardar Sarovar submergence zone died in a police firing in 1993 in Chinchkhedi, as the state authorities tried to forcibly evict people from their homes and lands.

"On June 3, 1993, the first house in Manibeli, that of Keshubhai Tadvi was demolished by the Maharashtra Government with the force of over one hundred police. Only after removing and beating Kunta, the 16-year-old daughter of Keshubhai, could the government have its conquest. For two days, by her sheer determination and fiery tongue, Kunta kept hordes of policemen at bay and resisted intimidation by senior police and administrative officers of the state"

- Sanjay Sangvai, *The River and Life: Peoples Struggle in the Narmada Valley*, Earthcare Books, Mumbai 2000



sunil kumar

2. Lack of consent of the community before evictions may lead to 'accidents' where children are often the victims.

In the Yamuna Pushta evictions in 2004, typically, the eviction drive was accompanied by the use of force including arrests and ill treatment of slum dwellers. On 13 March

19 Maranatach He Jag Jagate', Punarvasan Sangharsh Samiti

2004, a child and a 40-year-old man were burnt to death in a fire that started during the demolition drive in Indira Basti. On 23 March 2004, two children were trapped and later rescued from under debris during the Kanchanpuri demolitions.

In the evictions in Mumbai, the demolition drives in many colonies were carried out in March, the month when most students are appearing for exams. Destruction of homes invariably results in a disruption of their lives and most children are unable to appear for their annual exams and thus end up losing the entire year.

After eviction

In the immediate aftermath of an eviction, most families are rendered homeless. The sudden loss of security of home, community and exposure to harsh weather conditions often has a severe impact on children's health.

From December 2004 to March 2005, close to 4,00,000 people were forcibly evicted from various parts of Mumbai in order to 'clean up' or 'beautify' the city. Among those made homeless overnight were close to 1,80,000 children as estimated by YUVA, a group working on housing and children's issues in Mumbai.²⁰ Most of these children belong to dalit, adivasi and nomadic communities. With no resettlement for a large section of those evicted, many families along with their children were forced to live in the open. The denial of access to food for days after the eviction, lack of timely access to health care and exposure to harsh weather conditions resulted in the deaths of two children among the evicted communities.

Laws /Policies

"Forced eviction and demolition of slums will be stopped and while undertaking urban renewal, care will be taken to see that the urban and semi-urban poor are provided housing near their place of occupation."

- Common Minimum Programme, United Progressive Alliance

1. As Article 300 A of the Indian Constitution provides protection from deprivation of property unless under the authority of law, forced evictions in India are

mainly carried out using the Land Acquisition Act, 1894. The Act lays down the procedure for acquisition of land for **public purposes** by the State for itself or other parties.

For instance, under section 4 of the Act, affected communities are given notice regarding plans for acquisition. Section 17 of the Act, however, provides for application of the 'urgency clause', which allows for acquisition of land prior to the granting of compensation. In cases where affected people have opposed acquisition of their land due to inadequate compensation and rehabilitation, land has been acquired under section 17 of the Act.



shiznitwit

²⁰ YUVA report 'Mumbai Evictions (December 2004- March 2005) An Analysis of Impact in Twenty Eight Communities', YUVA, Mumbai 2005

The Land Acquisition Act, the principal Act by which compensation and rehabilitation is determined, is inherently flawed from a human rights perspective. Section 3 (c) of the Act defines 'person interested' as an inclusive definition and recognizes all forms of interests over the land. However, the Act leaves the discretion to the Collector to determine the various quantum of interest. And most often it is misread and constructed to mean that it disenfranchises communities like forest dwellers who may not have legal title to their homes and lands by implementing authorities and activists alike. This wrong reading of the Act also works to the disadvantage of many tribal communities where although land is owned and cultivated at the level of the individual family, the title deed or *patta* continues to be in the name of the head of the extended family and as a result only the title holder is read to be eligible for compensation. After years of intense struggle, pressure and legal intervention, adult sons of every family in the Sardar Sarovar submergence zone have been recognized as separate units and therefore are entitled to the full rehabilitation package.

2. Many forest dwelling communities face involuntary displacement as a result of conservation laws like the Indian Forest Act 1927, the Wildlife (Protection) Act 1972 and The Forest (Conservation) Act 1980. These Acts together strengthen state powers in restricting access to forests declared to be reserved forest areas, national parks and tiger reserves. For instance, Wildlife (Protection) Act empowers the state government to declare certain forest areas as reserved areas, sanctuaries or national parks for conservation purposes. Sections 19 – 26 lays down the process of acquisition with claims and rights of persons with regard to the area declared as a sanctuary, reserve forest, national park or tiger reserve. Like the Land Acquisition Act, these legislations are also misread often to include only claims backed with land titles are considered as legitimate. In most cases, forest dwellers do not have land deeds and are viewed as encroachers by the state and are thus vulnerable to eviction without due compensation. It is only after intense lobbying and pressure, that in some cases, land tax receipts, fine receipts or a certificate from the gram panchayat is treated as a legitimate claim.
3. In the urban areas which is the principal legal instrument used for conducting large-scale evictions. Under this Act, an area is declared as a slum if, based on design, density and access to basic facilities, it is considered unfit for human habitation. The declaration of an area as a slum makes it eligible for upgrading only if the relevant land owning agency confirms that it will not need the land for the next 10-15 years. Recognition under the Act, however, does not provide adequate protection against eviction. In fact, section 7 of the Act allows for demolition of a building if it is deemed unfit for habitation and section 9 allows for the clearance of the entire slum if declared uninhabitable. Going a step further, section 28 allows the competent authority to use necessary force against any person who does not comply with the eviction order.

None of the acts used to evict people from their homes and lands mention procedures or concessions that give due consideration to children's rights and needs. Nor do any of them have necessary provisions to address cases of children-headed households, which seem to be on a rise due to a variety of factors including armed conflict, natural disasters and HIV AIDS.

Inadequate Rehabilitation

Most often, after an eviction, only a fortunate few are eligible for rehabilitation; the rest, because of arbitrarily determined cut-off dates and due to unjust determination of legal title to their homes and lands, are left to fend for themselves.

It is important to note that most of the recent urban evictions in Delhi or Mumbai have not been a result of the imposition of the Slum Areas (Improvement and Clearance) Act but have resulted from executive and policy decisions on urban renewal and beautification or court orders.²¹

21 The Mumbai evictions were a part of the plan to modernize Mumbai along the lines of Shanghai while the Yamuna Pushta evictions were a result of petitions regarding filed by local associations regarding congestion in the area

After the Yamuna Pushta evictions, a mere 16 per cent of the 1,30,000 evicted were eligible for any kind of rehabilitation.²² A bulk of those with no alternatives are forced to become homeless and live and work on the streets, while others are forced to migrate in search of food and shelter.

The Impact on Children

Adequate standard of living

"In spite of the growth of the gross domestic product, the Committee is concerned about the widespread poverty in the State party and the still high number of children who do not enjoy the right to an adequate standard of living, including access to clean drinking water, adequate housing and latrines. The Committee is further concerned at the negative consequences of displacement and rehabilitation projects which intend to improve living conditions but which remove children from their habitat to a new environment often not prepared for children's needs."

Para 62, CRC/C/15/Add.228

The non-conformity of rehabilitation packages to international housing rights standards once again has a severe impact on the children of the resettled families in a variety of ways. These include the following:

Malnutrition and Starvation

India has the third largest number of malnourished children in the world. Inadequate rehabilitation often tends to ignore the livelihood and nutritional needs of the community and contributes to the number of malnourished children. As livelihood options at the resettlement sites shrink, there is a natural sharp fall in the food intake of the family. This has the most severe impact on children.

As pointed out in Section 1, the high incidence of starvation deaths among Korku adivasi children in the Melghat regions is closely linked to their displacement because of Project Tiger from their traditional habitat and loss of access to forest produce.

Poor health due to lack of adequate facilities

Inadequate rehabilitation sites with poor water, sanitation and solid waste management facilities can have a grave impact on children's health. Such a situation, coupled with the lack of adequate health care seen in the case of most resettlement colonies and the fact which are located at the outskirts of the city and at great distances from the major clinics and hospitals, can threaten the very survival of the child.

In July 2004, within few months of resettlement, 12 Delhi children died due to water-borne diseases caused by lack of clean drinking water, proper sanitation and solid waste management. Lack of access to timely medical attention and the absence of proper medical facilities at the site also contributed to their deaths.

Loss of Access to Education

Displacement and relocation also severely affects children's access to education. The fall in family incomes caused by displacement is one of the major causes for a high rate of drop out from schools among children of evicted families. The lack of proper educational facilities at resettlement sites once again contributes towards denying children their right to education.

According to a study prepared by the Jan Sangharsh Morcha, the school drop-out rate in Harsud, a town affected by the Indira Sagar Project, is as high as 25 per cent.



Lack of adequate education facilities at resettlement colonies also denies girl children their right to education. Parents in Delhi's Bhalaswa resettlement colonies prefer to keep their daughters at home rather than risk their personal safety by sending them to schools far away.

Loss of Childhood

Due to the inadequacy of cultivable land, loss of access to forest produce, distance of the resettlement colony from agricultural areas, or lack of farm employment, men, women and older children of families affected by the Sardar Sarovar dam have been forced to migrate to cities. Forced into joining the shrinking urban labour market not only has severe adverse impacts on the child's right to education, health, and food but also exposes the child to physical and sexual abuse.

Laws / Policies

In spite of a long standing demand, from academics, activists and affected people, the central legislation on resettlement and rehabilitation is still pending.

The National Policy for Resettlement and Rehabilitation, 2004 deals specifically with development-induced displacement. While this policy in some ways does recognize the impacts of displacement on the marginalized sections of society, it has been found to be severely lacking with regard to the promotion, protection and fulfilment of children's rights.

The Government has announced the Rehabilitation and Resettlement Bill 2007 (Bill No. 98, 2007). This too lacks any provision specifically addressing children.

Several states like Maharashtra, Madhya Pradesh and Orissa have legislation and policies that lay down the procedure for rehabilitation. Similarly specific corporations like the National Thermal Power Corporation, Coal India, and the National Highways Authority of India have their specific project related resettlement and rehabilitation policies. Unfortunately, these too are found to be severely lacking in several aspects including in the area of child rights.

Who can be held responsible?

The Prime Minister is ultimately accountable as head of the government in the center as are chief ministers in states. However, other relevant authorities exist who may be held responsible; their intervention may be sought in cases of forced eviction and inadequate rehabilitation. These include:

In the case of urban evictions

1. Union Ministry of Urban Affairs.
2. Relevant State Ministry/Department for Urban Affairs.
3. Local Municipal Corporation and Municipal Commissioner.
4. Local Municipal Council and Chairperson.
5. The Slum and Resettlement Wing of the relevant administrative body.
6. Relevant land owning agencies such as Indian Railways, Delhi Development Authority, etc.

In the case of evictions in the rural areas,

1. Union Ministry for Rural Development.
2. Relevant State Ministry/Department for Rural Development.
3. Where relevant, Ministry of Environment and Forests, Ministry for Water Resources, Ministry for Mines and Minerals, etc.
4. District Administration – Collector, Sub-divisional Magistrate.
5. Relevant authorities or implementing agencies like the Narmada Valley Development Authority, National Thermal Power Corporation, etc.
6. In cases of eviction from forest areas, the relevant Forest/Range Officer.

Strategies to Mitigate the Impact of Forced Evictions and Inadequate Rehabilitation on Children

Before the eviction

1. Where relevant, try to have the area recognized or regularized and ensure that all have the necessary proof of residence including title to land, ration cards or any such document.
2. Demand information from the local district administration regarding details of plans for acquisition of land and compensation to be awarded.
 - a. The Right to Information Act may be used if information is not easily forthcoming.²³
 - b. Effective use of the media can also help in bringing out vital information.
3. Ensure that all members including women, children, and those belonging to marginalized sections of the affected community are aware of displacement and rehabilitation plans.
4. Monitor the issuance of acquisition or eviction notices to ensure that every household to be evicted has received adequate notice.
5. If notices for acquisition of land have been issued under the Land Acquisition Act, ensure that all procedures, including declaration of the award under section 4 and opportunity for receiving objections under section 9 of the Act, are meticulously followed by the local administration.
6. In cases of eviction under the Slum Areas (Improvement and Clearance) Act 1956 or any of the conservation laws, mobilize demand for full rehabilitation and compensation benefits.

²³ See Annexure IV for Application Form for accessing information

7. Conduct independent assessments of impacts, assets and costs of displacement, including social and environmental costs, especially with regard to children's rights.
8. Redress for lack of due procedure, inadequate compensation and proper rehabilitation can be sought through filing for an injunction in the relevant court of law.
9. Mobilize the affected community to ensure that essential services like electricity, water, ration shops, schools and health centres continue to run as long as people continue to live in the area to be acquired. This can also be done by obtaining a stay order against closure and discontinuation of essential services from the relevant court of law.
10. Demand rehabilitation plans that are according to the human rights and child rights approach, and that rehabilitation is available to all residents regardless of possession of title deeds.
11. Demand that no eviction is allowed to occur without provision of adequate rehabilitation.
12. Demand for community participation in the rehabilitation process including the monitoring of construction of the resettlement site.
13. Ensure that the resettlement site has all basic facilities including potable water, electricity, schools, health care facilities, adequate space for children to play, etc.
14. Demand for the setting up of an independent grievance redressal authority that will handle eviction and rehabilitation-related child rights complaints.
15. Make effective use of the media for awareness raising and mobilization. Public hearings, peoples' tribunals, etc., are also effective mechanisms to raise concerns of the affected people.

During the eviction

1. Ensure through mass mobilization and negotiations with relevant authorities and political leaders that evictions do not take place at night, in inclement weather conditions or during school and college exams.
2. Ensure monitoring of eviction procedures by independent bodies of citizens' groups in order to ensure that no excesses take place on the part of the authorities on affected people.
3. Demand for adequate time to be given to residents to remove their belongings from their homes. Under no circumstances should demolitions take place if residents are still in or around their homes.
4. Ensure that all children, especially young children and disabled children are at a safe place, away from the site where the eviction is taking place. Children should not be made to witness the demolition of their homes.
5. Ensure that emergency medical assistance is available on site.



After the eviction

1. Demand that the local administration provides all evicted persons necessary transport to take them and their belongings to their respective resettlement colonies.
2. Where resettlement is not immediately available all steps must be taken to ensure that evictees and their families are provided with adequate temporary shelters with full access to basic facilities including access to food and health care.
3. Children's access to schools must not be affected after an eviction.

At the resettlement site

1. Demand that resettlement sites are fully compliant with international human rights and housing rights standards.
2. Ensure that resettled communities have full access to all benefits including access to local ration shops and health centres.
3. Demand that all resettlement sites take into account the specific needs and rights of children and provide for adequately staffed schools in the vicinity, play grounds, opportunities for recreational activities.
4. Demand that resettlement sites must provide a safe and violence-free environment critical for the full development of children.

Long term measures

1. Press for the amendment of all laws and policies related to evictions, displacement and rehabilitation from a child rights' perspective. Since most of our laws are blind to the needs and rights of children, the UNCRC can be used as a standard against which all laws can be assessed.
2. Ensure that standards laid down in General Comment no. 7 (1997) of the Committee on Economic, Social and Cultural Rights on forced evictions, the United Nations Comprehensive Human Rights Guidelines on Development-based Displacement; the Guiding Principles on Internal Displacement are used to inform all laws and policies related to evictions and displacement.
3. Apart from the UNCRC, build pressure for compliance with other international human rights obligations including the ICCPR, ICESCR, CEDAW and CERD.
4. Mobilize civil society to draw the attention of bodies like the UN Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural Rights to the housing rights violations by participating in the parallel reporting process.
5. Press for human rights, child rights and housing rights training to be given to all implementing authorities as well as to lawyers and judges.
6. Ensure that affected communities have full information on their rights, especially vis-à-vis children in the context of eviction and rehabilitation.

Homeless Children and the Right to Adequate Housing

Homelessness is a word that is commonly used to describe a situation of shelter less existence. Street children - children working and living on the streets - are a common phenomenon in most parts of India.

Children are rendered homeless for a variety of structural and non-structural reasons. Some of these are as follows:

1. Situations of armed or ethnic conflict which result in the loss of home and/or family.
2. Forced evictions and lack of adequate rehabilitation caused by development and infrastructure projects.
3. Poverty and lack of adequate livelihood options in their places of origin.
4. Famines and droughts.
5. Natural disasters like floods, earthquakes, etc.
6. Trafficking for begging.
7. Violent and abusive homes.

Houseless Households in India

Houseless Households	Number of Households	Population
Rural	259,742	1,164,877
Urban	187,810	778,599
Total	447,552	1,943,476

Source: Census of India 2001

Ways in Which Homeless Children's Right to Adequate Housing is Violated

1. By their very definition, street children or homeless children are examples of children whose right to adequate housing is continually violated.
2. Without a house, street children are automatically denied basic infrastructure facilities including, potable water, electricity, sanitation, etc.
3. Forced to live on the streets and sleep under flyovers, abandoned buildings, railway platforms and pavements, street children are often victims of physical and sexual abuse.

The following are results from a study conducted to ascertain the magnitude of sexual abuse suffered by inmates of an observation home in Delhi before admission. The final sample consisted of 189 boys. Majority of subjects belonged to urban, Hindu nuclear families and lower or lower middle socio-economic classes. Among the 178 subjects living away from families, 62.9 per cent had left home between 6 to 10 years of age. Eleven boys could not provide complete information for socio-economic status and were excluded from analysis.

Overall, 38.1 per cent boys reported sexual abuse with use of force and over 15 per cent boys reported penetrative sexual abuse. The maximum proportion of abuse was reported in the age groups 8-10 years. Over 93 per cent children reported the incident to be within 2-3 weeks of leaving home. Except four, all boys interviewed reported at least a single episode of sexual abuse. All the perpetrators were males except for one. Among the 72 abused children, 61.1 per cent had some physical sign of abuse while 40.2 per cent showed behavioural signs of sexual abuse. Eighteen boys presented with signs suggestive of sexually transmitted diseases.²⁴

24 'Sexual Abuse of Street Children Brought to an Observation Home', Deepthi Pagare, G.S. Meena, R.C. Jiloha and M.M. Singh From the Departments of Community Medicine and Psychiatry, Maulana Azad Medical College, New Delhi 110 002, India. July 2004

4. Street children are vulnerable to being trafficked and are sometimes forced into begging by the begging mafia.
5. Given their status, most do not have access to schools and health care facilities.
6. Many street children end up using drugs, thus worsening their health conditions.
7. Street children, because of their status, cannot avail of a number of government schemes including the Integrated Child Development Services (ICDS), Sarva Shiksha Abhiyaan (SSA).
8. Vagrancy laws are used to criminalize homeless children who are then incarcerated in custodial institutions.
9. Conditions in custodial institutions, whether observation homes, special homes or children's homes, are often found to be dismal, falling far short of right to adequate housing standards.
10. Municipal authorities are entrusted with the responsibility of providing night shelters for destitute and street children; however, these night shelters are few and far between and grossly lacking in basic facilities.

Laws / Policies

In terms of laws and policies, there is very little that one finds on street children. In spite of the large number of homeless people, till date there is no comprehensive national policy to combat homelessness. In fact as pointed out by Varupi Jain the term 'street children' found a mention in government policies as late as 1993 in the Scheme for Assistance to Street Children established by the Ministry of Social Justice and Empowerment in the same year. This scheme was renamed as Integrated Programme for Street Children in 1998. According to the official website of this ministry, the programme aims "to prevent destitution of children and facilitate their withdrawal from life on the streets. The programme provides for shelter, nutrition, health care, education, recreation facilities to street children and seeks to protect them against abuse and exploitation."²⁵

The Committee recommends that the State party:

- (a) Strengthen and extend its Integrated Programme for Street Children to address the large and increasing number of street children, with the aim of protecting these children, especially girls, and of preventing and reducing this phenomenon, in particular through assistance to families and the provision of adequate housing and access to education;
- (b) Ensure that street children are provided with adequate nutrition, clothing, housing, health care and educational opportunities, including vocational and life-skills training, in order to support their full development, providing official documents when necessary;
- (c) Ensure that these child victims of physical, sexual and substance abuse are provided with recovery and reintegration services, protection from arrest and maltreatment by the police, and effective services for reconciliation with their families and community;
- (d) Collaborate with non-governmental organizations working with street children in the State party and seek technical assistance from, among others, UNICEF.

- para. 77 CRC/C/15/Add.228, 26 February 2004

The scheme for providing night shelters for the urban homeless was introduced in 1988-89. According to the government, the scheme was supposed to progress as

²⁵ Varupi Jain, 'Salaam, Dilli!' India Together <http://www.indiatogether.org/2003/aug/chi-sbt.htm>

per demand. This means that the states would put forward proposals, which would then be sanctioned by Housing and Urban Development Corporation Ltd. (HUDCO). By July 2004, HUDCO had sanctioned 99 night shelters across India. Of these, 40 were in Maharashtra.²⁶

In Delhi, of the 12 night shelters run by the government, only one is for children and the rest of the 11 are for men. The single night shelter for Delhi's homeless children houses close to 100 children, while the rest are left to fend for themselves. Additionally in October 2004, the Delhi government decided to close down Palika Hostel, the only shelter for women in the city in order to use the site for constructing homes for employees of the New Delhi Municipal Council. The eviction also impacted around 60 children who were living with the women.

Who Can be held Responsible

The Prime Minister, as the head of the government at the centre, and chief ministers as heads of government in the states, are ultimately responsible. The following list includes some of the relevant authorities who may be held responsible and their intervention may be sought.

1. Union Ministry for Urban Affairs.
2. Union Ministry for Social Justice and Empowerment.
3. Union Ministry for Women and Child Development.
4. Relevant State Government Ministries.
5. Local Municipal Authorities (Municipal Corporation of Delhi, New Delhi Municipal Council, etc.).
6. Local Child Welfare Committees.



steven kouts

Strategies to Minimize housing Rights Violations in the Case of Street Children

Although we recognize that providing night shelters is not the answer to the growing problem of homelessness, it is definitely an important step in ensuring that homeless children have at least a safe and secure place to rest and keep their belongings until more sustainable remedies are found.

Immediate steps to be taken

1. In the absence of updated official figures on the number of street children there is an urgent need for an enumeration drive in order to effectively address their concerns.
2. Ensure that the government provides adequate number of night shelters, depending on the number of street children.
3. School buildings, community centres, marriage halls should be made available for use as temporary night shelters while new shelters are being constructed.
4. In the meanwhile, street children must be protected from physical and sexual abuse – joint patrols by police, civil society groups and members of child welfare committees could be one of the ways of ensuring their protection.

²⁶ 'Homeless in Delhi' Annie Zaidi, Frontline 2005

At the night shelters

1. Ensure that conditions at night shelters are consonant with India's constitutional and international human rights (including housing rights) and child rights commitments.
In terms of facilities this must include the following:
 - a) Adequate space per child to rest and keep his/her belongings.
 - b) Potable water and adequate nutrition (at least one meal in the evening and one in the morning).
 - c) Hygienic environment, including water and adequate toilet facilities.
 - d) Access to healthcare facilities.
 - e) Access to schools or at least non-formal education.
2. Ensure that there are separate night shelters for boys and girls.
3. Ensure that all night shelters cater to the needs and rights of disabled children.
4. Many homeless children live with their mothers. There is therefore an additional need to drastically increase the number of night shelters available to women.
5. Ensure that NGOs and citizens' groups have access to the shelters and monitor their condition regularly.
6. Ensure that all night shelters have an effective complaints and suggestions mechanism and that children's voices are heard by an independent body.

Outside the Shelters

1. Media and public opinion could be used effectively to ensure that street children are not criminalized and sent to custodial institutions.
2. Build pressure to ensure that street children are not made victims of the Bombay Prevention of Begging Act.
3. Innovative schemes like child friendly cities, issuance of identity cards, etc., should be explored to protect street children from abuse and other child rights violations.

The city of Calcutta has equipped itself with a city-wide coordinating mechanism for reaching unreached urban children. The City-Level Programme of Action for Street and Working Children (CLPOA) aims at coordinating a variety of efforts underway in the city in favour of poor children and to promote child-rights oriented policies. The CLPOA is an umbrella of Government and non-government agencies committed to extending basic services and protection measures to all deprived urban children. A registered network, the CLPOA operates through six Zonal Committees and is coordinated by a central body whose membership includes Calcutta Municipal Corporation, the sectoral government departments of the West Bengal State Government (Health, Education, Social Welfare, Labour, etc.), police, Human Rights Commission, the Juvenile Justice Board, UNICEF, the British Council, India Medical Association, and as many as 50 NGOs. Under the aegis of the CLPOA, the Calcutta police has adopted a Child Protection Card, jointly issued by the police and an NGO acting as guarantor for the child. The card can be issued for any child of Calcutta, but is particularly useful to children who live on streets, stations, markets, with inadequate family support. Over the past four years, the CLPOA has coordinated with Calcutta police in conducting training courses for police officers to sensitize them to the rights and needs of deprived children and juvenile offenders, and link them with social and protection services. The police also impart self-defence training to vulnerable children. Today, each police station co-ordinates with a set of NGOs operating in its area of jurisdiction and hosts health services every Sunday morning. Currently, as many as 42 police stations in the city are involved in activities aimed to protect children at risk.²⁷

27 Child friendly cities - UNICEF www.childfriendlycities.org

Long-term strategies

Any long-term strategy must aim to completely eradicate homelessness among children. Thus it must go beyond the provision of night shelters for such children. The various situations mentioned at the beginning of this section that push children into homelessness must be understood, analyzed and addressed if we are to find a long-term and sustainable solution to the problem.

1. There is an urgent need for human rights (including housing rights) and child rights based policy on street children.
2. There needs to be pressure from various sections of society in favour of formulating such a policy. Effective use of the media and an awareness campaign should be considered.
3. The policy will have to be comprehensive, based on information of long- and short-term impacts of homelessness on children's rights to survival, protection and development and participation. Differential impacts on girls, infants and disabled children must be recognized.
4. The policy must evolve from a consultative process involving relevant authorities, NGOs and citizens' groups working on the issue, child psychologists, child rights groups, and most importantly, the homeless children.
5. The policy must explore innovative ways in addressing adverse impacts.
6. Based on the indivisibility of all human rights, the policy for homeless children must attempt to address both direct and indirect causes for homelessness among children.
7. The policy must involve the setting up of effective grievance redressal mechanisms that are easily accessible to all, including homeless children.
8. **The policy must ultimately result in a long-term solution where, depending on the particular situation, homeless children are either reunited with their families or rehabilitated in protective care homes. It is of utmost importance that these homes are not run like custodial institutions but are designed to provide a healthy environment that will respect the rights of all children to survival, protection, participation and development.**
9. All relevant authorities must be trained from a child rights perspective with a special focus on children and homelessness



Chris Verrill



Section III

“... I do believe that the time has come for a paradigm shift in disaster management ... a humane policy must pay due attention to the needs of children, senior citizens, women, disabled persons and weaker sections of society.”

Inaugural speech by Manmohan Singh Prime Minister of India
at the First India Disaster Management Congress, November 29 year; New Delhi





Children's Right to Adequate Housing in Emergency Situations

'Situations of emergency' by their very name suggest conditions where basic expectations and entitlements may be sacrificed in favour of 'larger interests' like national security and social and economic stability. It is in these very situations, however, that human rights of all, especially of children, need special attention if the impacts of the emergency are to be contained.

For the purpose of the Handbook, we will look at two kinds of emergency situations:

1. Situations of armed conflict including social unrest, communal riots, insurgency, rebellion and war.
2. Situations caused by natural disasters such as earthquakes, floods, cyclones and the recent tsunami.

Children, as one of the most vulnerable groups of our society, often are the worst hit in situations of emergency. Some of the impacts on children in emergencies are as follows:

1. In situations of both armed conflict and natural disasters, children account for a significant number, if not half, of the casualties.
2. Families are often broken up, many children are orphaned and some lose their siblings.
3. Many children in emergency situations witness violence, death of family members, friends and neighbours and experience the loss of familiar living conditions. This often has a severe adverse impact on children's psychological health.
4. Emergency situations also result in loss of community, thus impacting upon



social networks crucial in the growth and development of children.

5. Loss of personal security and privacy, an important component of the right to adequate housing, is severely affected during times of emergency.
6. Post-emergency living conditions are often inadequate, lacking space and basic facilities critical for the survival and development of children.
7. Lack of access to education and health care are two of the most common outcomes of an emergency situation.
8. In the post-emergency scenario, many children are sent to 'homes' and orphanages or given in adoption far away from their original area of residence. The changed environmental and cultural milieu can have a severe impact on the child's right to growth and development.

All of the above constitute a violation of children's right to adequate housing among other basic human rights as well as child rights. Impacts on all those affected by emergencies can be mitigated if a human rights and, where relevant, a child rights approach is taken towards, protection, relief and rehabilitation.

Children's Right to Adequate Housing in Situations of Armed Conflict

Children continue to be the main victims of conflicts. Their suffering takes many forms. Children are killed, made orphans, maimed, abducted, deprived of education and health care, and left with deep emotional scars and trauma. Forced to flee from their homes, refugees and internally displaced children are especially vulnerable to violence, recruitment, sexual exploitation, disease, malnutrition and death. Children are being recruited and used as child soldiers on a massive scale. Girls face additional risks, particularly sexual violence. These egregious violations of children's rights take place in a pervasive climate of impunity.

– Report of the Secretary-General on Children in Armed Conflict, 2003²⁸

In most cases the violation of the right to adequate housing features very low on the priority list when it comes to addressing human rights violations in situations of armed conflict. The bulk of the effort is thus directed towards restoring peace and security and putting an end to violence and the loss of life. Given the indivisibility of all human rights, a closer look at the situation brings out the myriad ways in which the right to adequate housing is affected in situations of armed conflict and how the promotion, protection and fulfilment of the right to adequate housing can often provide protection to other human rights.

How is Children's Right to Adequate Housing Affected in Situations of Armed Conflict?

1. During a situation of armed conflict, personal security is severely affected. Civilian populations including children often fall prey to the violence unleashed by the warring sides. Physical safety and security is deemed as integral to the right to adequate housing. A loss of physical safety is thus a violation of the right to adequate housing which has a direct impact on the child's right to survival and protection.

28 Child Protection A Handbook for Parliamentarians, Handbook for Parliamentarians No.7, Inter-Parliamentary Union and UNICEF, 2004

On 15 April 2003, a 10- year old girl, Lamneichong alias Chochong, daughter of Jamsei Mate, was hit on the right rib by a stray bullet during a heavy exchange of fire between two unidentified rival armed opposition groups at Tuibuong under Churachandpur Police Station of Manipur. The injured girl was sleeping when she was hit.²⁹

2. Conflict scenarios often result in mass population transfers, whether 'voluntary', forced by safety concerns, large-scale evictions caused by violence or as per military requirements, as in the case of border villages. Relocation in such cases is almost always to 'relief camps' which fall far short of the right to adequate housing standards not only in terms of the type of housing provided but also in terms of access to basic services, location and cultural adequacy.

Of the 2,936 occupants affected by the riots in Gujarat, in Bakarshah Roza Camp in Ahmedabad, there were 654 boys and 568 girls. The camp did not have adequate shelters. Only plastic sheets were used for some shade. Two tents were used for sleeping but these were inadequate. People crammed into these tents at night as there was no alternative. There was one toilet for every 300 people. Water had to be carried to the toilets. The camp had only four bathrooms. Members of the camp's organizing committee had to go to the Collector's office to collect relief material. Every such trip cost around Rs. 1500 which the committee had to generate from its own resources.³⁰

3. Living in camp-like situations in most cases is not a temporary phenomenon. Many continue to live in temporary housing situations for several years. This not only means that children, along with all those affected, are denied their basic entitlements as per the right to adequate housing, but conditions of socio-economic distress increase children's vulnerability to violence, trafficking and induction into the labour markets, thus robbing them of their childhood. Overcrowded living conditions also expose children to sexual abuse and violence.
4. Armed conflict and social unrest directly and adversely impact upon children's access to education. Many children are unable to attend schools in conflict zones due to the break down of transport, unstable family situations and curfews. This also affects the school and college examination cycle. Forced eviction or evacuation from their original homes often results in the discontinuation of education. Adequate education facilities are rare in emergency camps.

Ethnic strife led to a collapse of the education system in Karbi Anglong. Around 20,000 students had been denied access to education as most of the schools in the area were used to house the displaced people. For instance, of the 53 relief camps in Karbi Anglong, 32 are schools. Since the government had not made any effort to build temporary shelters and vacate the schools, all students in the area and not only those directly affected by the conflict were denied their right to education.³¹

5. Conflict situations also impact children's access to timely medical assistance including immunization. Overcrowded living conditions, absence of adequate sanitation facilities, lack of access to livelihood options, and low nutritional intake further exacerbate unsanitary and poor health conditions. For instance, camps for conflict-induced internally displaced persons in Kokrajhar and

29 The Sangai Express, Manipur, 26 March 2003, from The Status of Children in India: An Alternate Report to the UN Committee on the Rights of the Child, Asian Centre for Human Rights, October 2003

30 Rebuilding from the Ruins', a report by Habitat International Coalition and YUVA, 2002

31 'Lessons not Learnt by Assam: Ethnic Cleansing and Internal Displacement in Karbi Anglong and NC Hills', Asian Centre for Human Rights, November 2005

Bongaigaon have been reported as being in very poor condition. Shelters consist of rows of temporary sheds made of polythene and aluminum sheets. People sleep on the ground on makeshift beds of bamboo. There is a lack of clean drinking water; and diseases such as malaria, jaundice, dysentery, diarrhoea and influenza pose a serious threat. Groups of five to six people are forced to share essentials. To supplement food rations, which are adequate for a mere 10 days a month, camp inmates are reportedly compelled to consume snails, insects and wild plants. Pregnant women, children, and the elderly suffer the highest health risks in these camps.³²

6. Children orphaned in situations of armed conflict are often sent away to 'protective care homes'. In some cases, families choose to send their children to such homes in the hope of a safer and better future for them. These 'protective' homes are often in a completely different geographical and cultural milieu from the one originally inhabited by the child. Little information is shared with children about the reasons for this relocation and most are given no choice in determining their place of relocation. The lack of consultation and imposition of 'protective care' is in violation of the child's right to consultation and participation and can have a lasting impact on the child's right to growth and development.

"Conflict and strife in Manipur have forced parents to move their children to 'safer' environments, where many end up facing hardships and neglect. But they are always positive and full of hope, and need to be protected and involved in the processes that affect their lives. It was unusual to see a group of children from Manipur, aged 3 to 12, looking distinctly distraught; all sitting huddled and teary-eyed within the confines of the Juvenile Home for Girls in Bangalore. They were unaccompanied children who had been internally displaced from Manipur.

In my first interaction I learnt that they were sent to a voluntary institution in Bangalore by families and relatives in Manipur for the purpose of education. However, once they had been admitted into the Home, family members were discouraged from keeping in touch with their children. On a complaint from one of the foster parents, who was refused permission to speak to his daughter, the concerned state department conducted an inspection. They found that the children's home was not registered and nor were the children being sent to school. The children were then transferred to the Juvenile Home, Bangalore (which also serves as an observation home for girls) for interim care. The children, who were unaware of these dynamics, were perturbed at being whisked away from one institution to another and traumatized at being taken away so suddenly from what they perceived to be their new home. Their agony was further compounded at being kept in confinement within the Juvenile Home, which is essentially a custodial institution that they called 'jail'. They had no idea of their whereabouts or the reasons for being there. This naturally led to great distress and anger among the children. After weeks of this ordeal the children were finally sent back to their families in Manipur."

- Bindu Abraham, 'Protection of children from armed conflict', Humanscape, Vol. ix issue V, May 2002

32 The Status of Children in India: An Alternate Report to the UN Committee on the Rights of the Child, Asian Centre for Human Rights, October 2003



Rob Lerner

The Law

Although the Ministry of Home Affairs states that 16 out of the 29 states in the country are conflict-ridden,³³ and the number of conflict-induced internally displaced people seems to be on the rise, there is no specific legislation, policy or programme at the national level that addresses the issues of internally displaced, unaccompanied children.

The only law that applies in the case of such children is the Juvenile Justice (Care and Protection of Children) Act, 2000 (Amended in 2006) (JJ Act) as it covers children affected by natural disasters, armed conflict and civil commotion within the

purview of 'children in need of protection and care'. As a result, under the Act, children affected by armed conflict can be sent to children's homes. The custodial nature of these homes, however, prevent them from catering to the specific needs of children escaping situations of armed conflict. Section 39 of the Act refers to restoration of children to their original homes or to the care of foster parents. Little care, however, is taken to actually culturally and socially rehabilitate the child and equip him/her with the necessary educational skills. As a result, most of these children's homes are looked upon as jails by the children.

The JJ Act provides for the setting up of Child Welfare Committees in every district or group of districts to address issues concerning abandoned, unaccompanied children or those affected by armed conflict or natural calamities.

In the international scenario several human rights instruments, declarations and protocols address child rights issues in the context of armed conflicts including the Optional Protocol to the UNCRC on the use of children in armed conflict. Article 39 deals with government obligations towards victims of abuse. It specifies that governments must:

"take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment ... in an environment which fosters the health, self-respect and dignity of the child."

Further, the Fourth Geneva Convention, which deals with the protection of civilians in armed conflict, contains several provisions for the protection of children including article 14 which indicates that safety zones may be used to provide protection to children under fifteen, in particular. Article 24 is devoted to the protection of children under fifteen who are orphaned or who are separated from their families as a result of the war.

Additional Protocol I to the Geneva Conventions addresses the issue of child victims of armed conflicts and states in article 77 (1) that children should be the object of special respect and should be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

³³ The Status of Children in India: An Alternate Report to the UN Committee on the Rights of the Child, Asian Centre for Human Rights, October 2003

Who can be held responsible?

Apart from the Prime Minister who is ultimately accountable as head of the government in the centre and chief ministers of states, the following list includes some of the relevant authorities who may be held responsible and their intervention may be sought

1. Union Ministry of Home Affairs
2. State Home Ministries
3. Union Defence Ministry
4. The International Committee of the Red Cross
5. District Collector along with the entire district administrative machinery.
6. Child Welfare Committees set up under the Juvenile Justice Act, 2000. (Amended in 2006).

Strategies to mitigate the impact of housing on housing rights violations of children in situations of armed conflict

"In light of articles 38 and 39 of the Convention, the Committee recommends that the State party ensure respect for human rights and humanitarian law aimed at the protection, care and physical and psychosocial rehabilitation of children affected by armed conflict, notably regarding any participation in hostilities by children. The Committee calls upon the State party to ensure impartial and thorough investigations in cases of rights violations committed against children and the prompt prosecution of those responsible, and that it provide just and adequate reparation to the victims."

para. 69 CRC/C/15/Add.228 26 February 2004

Situations of armed conflict present innumerable difficulties for child rights activists in ensuring that the impact on children is minimized. In many cases it is almost impossible to negotiate or even dialogue with the two parties involved in the ethnic conflict. Violence and the breakdown of communication infrastructure often make it impossible to reach these areas in times of conflict. Given the extremely difficult conditions, below are some important steps that can be taken:

During the Conflict

1. Endeavour to establish zones of peace in conflict areas, especially those frequented by children. For instance, all residential housing, schools, playgrounds and recreational areas must be declared as zones of peace. According to the Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s, children need special protection in situations of armed conflict. There are recent examples in which countries and opposing factions have agreed to suspend hostilities and adopt special measures such as 'corridors of peace' to allow relief supplies to reach women and children and 'days of tranquility' to vaccinate and to provide other health services for children and their families in areas of conflict. These need to be universalized.³⁴
2. Ensure that the 'corridors of peace' include routes taken by children in going to schools, in order to ensure minimal impact on their access to education.
3. Ensure that all evacuation takes place in compliance with international human rights and child rights standards. Every effort must be made to ensure the

³⁴ Bindu Abraham, 'Protection of children from armed conflict', Humanscape, Vol. ix issue V, May 2002

families are not separated during evacuations and the nutritional and medical needs of children are met during the process.

After Evacuation from the Conflict Zone

1. Ensure that camp authorities have an exact list of all children, including girls and disabled children, residing in the camps.



Aunty_Blanca

2. Ensure that relief and medical assistance reaches children first, as a matter of priority. Families of children affected as a result of armed conflict must be given all possible assistance to ensure that the child's right to survival, protection, development and participation is protected and fulfilled.

3. Ensure that children's specific needs are recorded and this information is made available to the persons running relief camps. This information about the needs of childrens must determine the facilities & services made available to them.

4. Ensure that emergency relief camps are constructed based on a human rights and child rights perspective. Conditions in all relief camps must be consonant with principles laid down as per the right to adequate housing.

5. Advocate for the setting up of temporary structures for families at the earliest. Families should not be forced to live in emergency relief camps endlessly.

6. Monitor conditions in relief camps to ensure that children's specific rights are met.

7. Lobby for the setting up of adequately equipped schools so that children can resume their studies at the earliest.

8. Ensure that children have access to health care including child-specific trauma counselling.

9. Work with the local police and Red Cross committees to ensure that safety of children and protection from

hostilities from host communities is guaranteed.

10. Work with the local authorities to ensure that children are protected from violence and abuse. Special care must be taken to protect the rights of the girl child and disabled children.
11. Ensure that NGOs and civil society groups monitor camp conditions to protect children from child rights violations including trafficking and abuse.
12. In order to ensure that the local district administration is responsive to the complaints of housing rights violations, make effective use of the media and human rights organizations from outside the region.
13. Ensure that unaccompanied children are rehabilitated within the community or in institutions within the region. Institutions for orphaned and unaccompanied children must meet human rights and child rights standards including those set according to the right to adequate housing.
14. Ensure that orphaned and unaccompanied children are consulted and their opinions must be given due weight before any decision regarding their situation is taken.
15. Seek involvement and monitoring of institutions and the designated Child Welfare Committees.

16. Where such committees do not exist, ensure that they are set up at the earliest.
17. In cases where conflict persists, all those affected must be given adequate alternate accommodation consonant with human rights standards, till the time that they are able to return to their original homes and lands.

Long-term measures

1. At the outset there is a pressing need to recognize, evaluate and analyse the impacts of armed conflict and riots on children.
2. Based on these studies, there is a need to evolve a child rights based policy that will ensure the safety of children and provide them adequate protection during times of armed conflict.
3. There is an urgent need to press for a national level policy on addressing concerns of children orphaned due to an armed conflict. The policy must be compliant with human rights and child rights standards.
4. It is important that homes for child victims of armed conflict are not run along the lines of custodial institutions. Children affected by armed conflict have specific physical and emotional needs and special care should be taken to fulfil them. Section 34 of the J J Act, which deals with children's homes, should be amended suitably to ensure the same.

"Nurturing families in all their forms, are the primary institution and the best environment for protecting and promoting the rights and well-being of children. Whenever possible, children must be able to live with their families in adequate, secure housing."

When families are unable to provide for their children, states have the obligation to assist and support them.

Expert Seminar on Children's Rights and Habitat organized by UNICEF, UNCHS/Habitat, February 1996.

Children's right to adequate housing in situations of natural disaster

Situations of natural calamities or natural disasters have dramatic impacts on the lives, homes, livelihoods and basic rights of the affected people. Children not only often form a significant number of casualties (one third of all dead in the Indian Ocean tsunami of 2004 were children) but the sudden and often inexplicable loss of family members, neighbours and familiar surroundings can often have a lasting impact on the lives of children. Unable to express or articulate their needs for themselves, children affected by natural disasters form one of the most vulnerable and neglected sections of the affected community.

- Of the 32 states and union territories, 22 are disaster-prone.
- Between 1988 and 1997, disasters claimed 5,116 lives and affected a colossal 24.79 million people every year.
- In 1998, 9,846 people died and 34.11 million were affected by disasters.
- In the Orissa super-cyclone of 1999, over 10,000 people were killed and thousands left homeless.
- In January 2001, over 16,000 lives were lost in the earthquake that struck Kutch and other areas in the state of Gujarat. Thousands are still homeless. Thousands more have lost their precarious means of livelihood.

- In December 2004, over 10,000 lives were lost, 6000 people went missing and 6,47,556 people were displaced in Tamil Nadu, Kerala, Andhra Pradesh and the Andaman and Nicobar islands due to the South Asian Tsunami where more than 2,30,000 homes were damaged.
- 28% of the country's total cultivable area is drought-prone.
- 57% of India is earthquake-prone. The fragile Himalayan mountain ranges are extremely vulnerable to earthquakes (and landslides and avalanches). Western and central India are equally unsafe.
- Seventy-six lakh hectares of land are flooded every year. Over 1,300 lives are lost to floods every year. Worse, the areas affected by flood are rapidly extending beyond the basins of the Himalayan rivers to other parts of the country as well.
- India is the worst cyclone-affected part of the world. Five to six tropical cyclones form in the Bay of Bengal and the Arabian Sea every year; of which two or three are severe and lash the densely-populated coastal areas of India, causing indescribable damage.³⁵

How do disaster situations impact upon children's right to adequate housing?

1. Most natural calamities, including floods, earthquakes, cyclones and the recent tsunami, result in large-scale destruction of homes, leaving most people in the area homeless or forced to live in severely damaged homes.
2. Emergency relief camps set up soon after a disaster are mostly in the form of tents or are marriage halls, temples, churches, schools, etc., that are converted into emergency shelters. Most of these shelters provide basic cover, are overcrowded and lack adequate amenities. Children undoubtedly suffer as a result of poor conditions. Adolescent girls and disabled children are among the worst sufferers of such highly inadequate conditions.
3. Damage assessments rarely take into consideration losses from a child rights perspective and as a result compensation is often found to be inadequate, especially in promoting the rights of vulnerable groups including children
4. Overcrowded living conditions often lead to unsanitary conditions resulting in epidemics and the spread of infectious diseases. Children are often the first to be affected.
5. Crammed living conditions also deny children the required privacy. The lack of privacy exposes children, especially adolescent girls to physical and sexual abuse.
6. Relief material often does not include adequate food and there is a sharp drop in nutritional intake. The loss of ration cards in the disaster also limits people's access to subsidized food. Malnutrition sets in quickly for children under such circumstances.
7. Children are rarely consulted during the planning of their homes. As a result, children's needs and rights, especially those of disabled children, are often subsumed in favour of adults in the family.
8. Location of temporary shelters close to railway lines, roads and highways put children at great risk.
9. Temporary and permanent shelters constructed in the post-disaster scenarios often do not meet the standards set according to the right to adequate housing. Most of these lack adequate space, are uninhabitable, are located at a great distance from schools, areas of work and health care facilities.

³⁵ Vinod C. Menon and Shirish Kavadi, Infochange India, 2002



"In terms of housing – most of the affected communities in Tamil Nadu are still living in temporary shelters built of tar sheeting. The material, known to trap heat in the houses, has led to a variety of health concerns including rashes and eruptions on the skin, suffered mostly by children. The lack of access to proper health care has aggravated the situation. Lack of adequate space in temporary structures has also meant a decline in privacy for adolescent girls – most complained that they did not even have segregated space to change their clothes – and therefore an increase in their vulnerability to gender-based violence and sexual abuse. Safety of the children is a major concern in resettlement sites that have been built close to the highway. Relocation has also raised safety concerns among communities as they fear violence from local host communities. Women in Kargilnagar site in north Chennai said that because of their relocation to an unfamiliar area, leaving their children alone at home, particularly adolescent girls, while they went to sell fish was no longer an option."

'Post-tsunami Relief and Rehabilitation: A Violation of Human Rights', Habitat International Coalition – Housing and Land Rights Network, New Delhi 2005

10. Schooling is often disrupted because of the disaster and, if rehabilitation sites are located very far from the schools, many children end up dropping out. Increased economic distress caused by the disaster also makes it difficult for parents to send their children to school. Under such circumstances, it is often the girl child who is kept back at home.
11. Fall in income due to loss of livelihood or increased costs of commuting also has a direct and adverse impact on children's chances of being able to resume school.
12. Lack of adequate space and basic amenities also prevent children from studying at home, thus impacting upon their education and their right to development.

13. Distress situations, lack of adequate relief material and lack of space all contribute towards encouraging early marriage of girls, induction into the labour market and trafficking of children.
14. Orphaned children are often sent to protective homes and institutions without proper consultations. These homes are, in many cases in areas geographically, culturally and linguistically very different from the child's original habitat.
15. Conditions in these institutions often fall far short of the required standards of the right to adequate housing or child rights.

Laws/Policies

Despite of the very regular occurrence of natural disasters, it has taken the government all these year to put together national level disaster management policy. Individual states such as Gujarat, Bihar and Orissa have their own disaster management plans, although none can be said to be adequate from a human rights or child rights perspective.

It is noteworthy that while the Gujarat Earthquake Rehabilitation and Reconstruction Policy mentions support for affected children and alleviation of social deprivation through integrated nutrition and education strategies, no attention is paid to the housing needs of children. The Gujarat State Disaster Management Plan for exmple, does not mention children at all.

The World Bank is involved in the 'Emergency Tsunami Reconstruction Project' in collaboration with the Government of Tamil Nadu and the Government of Pondicherry. The project document of May 2005 points out that resettlement and rehabilitation will be in accordance with rehabilitation policies of the states of Tamil Nadu and Pondicherry. As these policies are 'still to be finalized', the project document provides for the application of the National Policy for Resettlement and Rehabilitation of Project Affected Families 2004. Apart from being critiqued as completely inadequate from a human rights perspective, this policy, because of the difference of context, is completely unsuitable for tsunami-affected people. Policy vacuums or reliance on inappropriate policies can only result in a further violation of peoples' human right to adequate relief and rehabilitation.³⁶

Special groups such as women, disabled persons, children, etc., are more vulnerable in an emergency situation and hence require special attention. The programme will aim at strengthening capacities of these groups to respond to disasters. Vulnerability and risk assessment in all the multi-hazard prone districts would have special emphasis on women and children.

- Community Based Disaster Reduction and Recovery Through Participation of Communities and Local Self Governments Disaster Risk Management Programme [2002-07]

United Nations Development Programme and National Disaster Management Division, Ministry of Home Affairs, Government of India

With regard to the care and protection of children, as in conflict situations, the Juvenile Justice (Care and Protection of Children) Act, 2000 (Amended in 2006) applies. Children deemed as those in need of protection and care are sent to Children's Homes under the present Act. These homes, run in custodial fashion, rarely cater to the special needs of children who have been rendered homeless through natural disasters or conflict for exmple. While section 39 refers to their restoration to either their original homes or to adopted/foster parents, this is rarely done and many continue to languish in prison life conditions.

³⁶ Unpublished note on post-tsunami policies prepared by Malavika Vartak for Action Aid International

"It is disconcerting to see the state's shifting policies with regard to children. After the Orissa cyclone the state government advertised a list of orphanages and homes, which would receive orphaned/destitute children. When NGOs raised a hue and cry about it, the government changed its stand and maintained that children should be kept in the community in *mamta gruhas*. After the Bhuj earthquake, the government came up with a 'no-movement of children' policy. When faced with criticism for not doing anything for children, they issued a notice for new orphanages to be set up where necessary."³⁷

Following a series of natural disasters, the government of India had introduced a National Disaster Management Bill in 2005, which never became a law. The National Policy framework on Disaster Management has been prepared after due deliberations and keeping in view the national vision 'to build a safe and disaster-resilient India by developing a holistic, proactive, multi-disaster and technology-driven strategy for Disaster Management. The Government set up the National Disaster Management Authority under the chairpersonship of the Prime Minister whose vision is stated to be "To build a safer and disaster resilient India by developing a holistic, pro-active, multi-disaster and technology-driven strategy for disaster management through collective efforts of all Government Agencies and Non-Governmental Organisations".

As part of the National Authority, the government has also set up the National Institute of Disaster Management for providing human resource development at national level in the area of disaster mitigation and management, policy advice and facilitating capacity building services including strategic learning, research, training, system development and expertise promotion for effective disaster preparedness and mitigation. It has also constituted National Disaster Response Force (NDRF) and National Disaster Management Resource Centres to be located within the NDRF Battalions which consist of several paramilitary forces trained in disaster management.

Who can be held responsible?

Disaster Management, which in most cases is in fact disaster response only, is the responsibility of State Governments. As in the other instances, certain relevant authorities may be held responsible and their intervention sought, besides the Prime Minister and the chief ministers of the states.

At the Central level

1. The National Disaster Management Authority, headed by the Prime Minister.
2. The National Crisis Management Committee headed by the Cabinet Secretary.
3. Crisis Management Group under the chairmanship of the Central Relief Commissioner comprising senior officers from various Ministries and concerned Departments, which has been responsible for reviewing contingency plans and measures required for dealing with a natural disaster, and coordinates the activities of the Central Ministries and the State Governments in relation to disaster preparedness and relief.
4. For all natural disasters except droughts, the Ministry of Home Affairs is the nodal Ministry and the other Ministries play a supportive role.
5. For droughts the nodal ministry is the Ministry of Agriculture, wherein the responsibility lies with its Department of Agriculture and Cooperation.
6. Technical Organizations, such as, the Indian Meteorological Department

³⁷ 'Young and Hurting', Neeraja Phatak, *Humanscape*, Vol. IX Issue V May 2002

(Cyclone / Earthquake), Central Water Commission (Floods), Building and Material Promotion Council (Construction Laws), Bureau of Indian Standards (Norms), Defence Research & Development Organization (Nuclear/ Biological Disasters), and Directorate General Civil Defence provide specific technical support to coordination of disaster response activities.

7. The National Disaster Management Division (NDMD) as the apex body within the Government for this purpose.

At the State level

1. State Chief Minister and the State Cabinet
2. State Crisis Management Group headed by the Chief Secretary
3. Relief Commissioners
4. District Collectors
5. Child Welfare Committees

Strategies to Minimize the impact of disasters on children's right to adequate housing

In the immediate aftermath

1. Soon after the disaster, ensure that all affected children are restored to their families, friends, relatives, etc. In the immediate aftermath it is important to ensure that no children are left unaccompanied.
2. Ensure that names of all children are documented. If any children have gone missing, their names should immediately be reported to the police.
3. Ensure that all orphaned children are entrusted in the care of community members, district administration or local groups in order to protect them from being trafficked.
4. The local district administration and relief commissioner are responsible for post-disaster relief and rehabilitation. Close monitoring will ensure that nobody is denied access to relief camps.
5. Make basic information on rights and entitlements available in a suitable language and form for all affected people
6. Monitor conditions in relief camps, which must meet basic minimum human rights standards with regard to shelter, space and basic amenities.
7. Relief camps and relief material must meet the specific needs of children especially adolescent girls and disabled children with reference to food, clothing and health care.
8. Ensure that adequate measures are taken to protect children, especially adolescent girls, from physical and sexual abuse.
9. Ensure that immediate and continued child-friendly post-trauma counselling is provided to affected children.
10. Ensure that damage assessment takes into account the losses from children's perspective and that compensation takes into account the specific housing and other needs and rights of children.
11. Ensure through the district child welfare committees that unaccompanied or orphaned children are not sent away from their familiar surroundings as seen in the case of some orphaned survivors of the Jammu and Kashmir earthquake of October 2005.

12. Ensure through the involvement of the district child welfare committees that unaccompanied children's rights are respected and protected in children's homes.

In temporary and permanent housing situations

1. Ensure that all concerned parties including children are aware of plans for resettlement and rehabilitation.
2. Ensure that all plans are informed by a human rights and child rights perspective.
3. Insist upon the community's participation in the decision making process regarding both temporary and permanent housing.
4. Ensure that steps are taken to move affected people into temporary housing within two weeks of the disaster.
5. Community mobilization and use of the media can effectively highlight problems with the relief process and hold relevant authorities accountable.
6. Public hearings, independent peoples' tribunals and monitoring by child rights and human rights groups can ensure that relief and rehabilitation are conceived and executed from a human rights approach.

Long-term strategies

1. There needs to be intense pressure applied on the states and the central government to devise disaster management policies and legislation.
2. Ensure that any such policy and law is based on the core human rights principles and are consonant with India's constitutional and international commitments especially with regard to child rights.
3. Devise a community-level disaster preparedness plan that will focus on the needs and rights of children during and after disasters, where the entire community is involved in guaranteeing the safety of its children.
4. It is important that institutions or homes for child victims of disasters or any child in need of care and protection are not run along the lines of custodial institutions. Children affected by disasters have specific physical and emotional needs and special care should be taken to address them. The Juvenile Justice Act, should be amended suitably to ensure minimum standards of care and protection, mental health interventions and case-specific care plans for children.
5. There needs to be a comprehensive policy on children orphaned in disasters. There is yet no consensus on whether such children should be rehabilitated within the community or should be allowed to be adopted by people from outside the community. Such a policy must be devised with the best interests of the child at its core.
6. Ensure the National Institute for Disaster Management engages with policy formulation from a child rights and housing rights perspective

IV

Section IV

The perception of homeless people as criminals is common throughout the world. Our study highlights that homeless people are more likely to be victims than perpetrators of crime. ... Assault and sexual abuse are common against women, young boys and girls.

Suzanne Speak and Grahah Tipple

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Conditions in observation, special and children's homes and children's right to adequate housing

The right to adequate housing affords the widest possible interpretation to the concept of housing, thus involving not only the family home but also a variety of institutions where children may be living. These include:

1. Children's homes for children in need of special care and protection including those affected by armed conflict and natural disasters.
2. Observation homes for children in conflict with the law.
3. Special homes for children in conflict with the law.



SoamL

4. Protective homes set up under Immoral Trafficking (Prevention) Act.

5. Tribal ashrams.

6. Swadhar homes for women (including girls) in difficult circumstances.

According to some estimates, as of November 2005, official figures of children in observation homes in Mumbai alone range from 2,500 – 3000.³⁸ Currently, Delhi has a total number of statutory and non-statutory 25 childcare institutions ranging from observation homes, 'sanskar ashrams' for children of de-notified tribes to homes for children of parents with leprosy.

What are the conditions in homes for children that violate their right to adequate housing?

Over the years, children's homes have earned a bad reputation for poor living conditions and the lack of proper care of child inmates. Media and civil society reports have periodically highlighted the high incidence of violence and abuse of children in remand and observation homes. Similarly, living conditions in these homes are also known to be far from adequate and extremely unsanitary.

1. Most homes for children are over-crowded where children do not have enough room to even sleep.
2. In some cases even potable water is not provided to the child inmates.
3. These homes often lack basic amenities like adequate and clean toilets, proper bedding, health care facilities, recreational facilities, etc., all integral to children's right to adequate housing.
4. Homes have been found to give inadequate food to the children.
5. Conditions in homes have been found to be highly insecure especially in cases

³⁸ 'Mumbai's Children' Statement by K. K. Devaraj, Bombay Teen Challenge, Mumbai, India November 8, 2005

where younger children are not adequately protected from being bullied by older children.

6. Many are victims of physical and sexual abuse by older children and sometimes by the staff.
7. Many children's homes do not cater to children's educational and skill building needs.
8. Children in these homes are known to lack adequate information regarding their status, their entitlements and grievance redressal mechanisms.

Living conditions that all childcare institutions must have:

All childcare institutions must be run on human rights and child rights principles. Based on these principles, some of the facilities that all childcare institutions must have include:

- Adequate space, sanitary conditions and privacy for every child.
- Proper and sufficient bedding and clothing.
- Nutritious and sufficient food.
- Potable water.
- Sufficient number of toilets and bathrooms with adequate supply of water.
- Twenty-four hour access to health care facilities and regular medical check ups.
- Access to counselling from trained child psychologists.
- Protection from violence and abuse from other children as well as from authorities in the institutions.
- Access to schools, vocational training and guidance.
- Sufficient time for recreational activities and play.
- Effective grievance redressal mechanisms.

The truth, is that the children in these homes live in inhuman conditions far below the ideal outlined above.

- The living areas are overcrowded, with the children often sleeping on the floors with just one dirty bed sheet and usually without a pillow.
- They do not have proper clothing. Many of them do not even have undergarments.
- The food provided is not sufficient and often the younger children are bullied by the older ones to part with their food portion and thus go hungry. All the children stay hungry until late evening if there is a short supply of cooking gas.
- The homes offer no proper medical facilities.
- Insufficient toilets and scarcity of water means they are not able to bathe regularly, which results in unhygienic personal habits and associated skin diseases and other ailments.
- The facilities provide no emotional counselling or support.³⁹

³⁹ 'Mumbai's Children' Statement by K. K. Devaraj, Bombay Teen Challenge, Mumbai, India November 8, 2005

Laws/Policies

All observation, special and children's homes are governed by the Juvenile Justice (Protection and Care) Act 2000, as amended in 2006.

As per section 8 of the Juvenile Justice Act, the state government may set up with the help of voluntary organizations, observation homes for the temporary reception of children in conflict with the law. State governments may, by means of rules under the Act, provide for the management of observation homes including standards and various types of services to be provided and the circumstances under which certification of an observation home may be granted or withdrawn. A child is kept in an observation home pending an enquiry by the Juvenile Justice Board. Once the inquiry has been completed, the child, if declared in conflict with the law, is sent to a Special Home.

Children's homes for children in need of care and protection including those found begging or affected by armed conflict or natural calamities are to be set up by state governments under section 34 of the Juvenile Justice Act. These homes may be set up in association with voluntary associations and are entrusted with the protection, education and rehabilitation of the child. Child Welfare Committees are constituted under this Act to deal with children in need of protection and care.

Section 35 of the Act provides for the setting up of state level inspection committees consisting of members of the State government, Child Welfare Committee, voluntary organizations and medical experts. Central and State level Advisory Boards advise relevant governments on conditions and facilities in the homes.



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Section 37 of the Act also provides for shelter homes by 'reputed and capable' voluntary organizations. The relevant state government may assist in the administration of the shelter homes. The shelter homes shall function as drop-in centres for children in urgent need of support. Shelter homes shall have facilities that will be determined as per the rules.

Sec. 44 of the Act requires the State Governments to provide for after care organisations and a scheme for after care for children in conflict with law or children in need of care and protection after they leave special homes or children's homes as the case may be, for a maximum period of three years.

Many of the State Observation Homes and Certified Schools of the country are run like 'punishment' places for children. Some of our members, who have been remanded to these institutions, report that during their stay, most often all the children there were locked up inside the institutions. Officials treated them very badly and often abused them physically and mentally. When children come out of these institutions, the society looks down upon them and treats them like criminals.⁴⁰

40 'The Alternate Report by the National Movement of Working Children, India', submitted to the Committee on the Rights of the Child, July 2003

There also exists the lesser known Orphanages and Charitable Homes (Supervision and Control) Act 1960. The scope of this Act extends to protective homes for women and children. It provides for the setting up of a Board of Control for the supervision of orphanages and charitable homes by individual states. Members of the Board of Control include members of Legislative Assemblies, and those nominated by the state government. The Board of Control is responsible for issuing licenses for the setting up of orphanages and homes and can also revoke licenses if the home is not being run as per conditions laid down in the license or is being run in a manner that is not suitable for the physical and moral well being of the inmates.

Members of the Board of Control are vested with the authority to supervise and control all matters relating to the management of homes in accordance with the provisions of this Act. They also have the powers to inspect such homes and access all records.

Who can be held responsible?

Apart from the Prime Minister who is ultimately accountable as head of the government in the centre and chief ministers of states, the following list includes some of the relevant authorities who may be held responsible and their intervention may be sought

1. Union Ministry of Women and Child Development
2. Relevant Ministries/Departments of the State governments
3. Advisory Boards on Juvenile Justice to the State and Central Governments
4. District level Juvenile Justice Boards
5. District level Child Welfare Committees
6. Inspection Committees
7. The Board of Control set up under the Orphanages and Charitable Homes Act
8. Supervisors and Officials in charge of running children's homes
9. Monitoring Committees set up various High Courts to look into the implementation of the JJ Act.

Strategies to ensure that children's rights to adequate housing are protected and fulfilled in child care institutions

When acting upon a complaint

1. In case of a complaint of poor conditions in a child care institution, the immediate steps should include seeking intervention and inspection through the Child Welfare Committee and/or the Inspection Committee. Monitoring Committees set up by various High Courts or the High Court itself.
2. A written complaint should be filed with superintendent in charge of the home regarding poor conditions and details of action for improvement should be sought.
3. Media and public opinion should be used to pressurize responsible authorities.
4. In case of inadequate response, judicial intervention could be sought through the High Court.
5. Continued and close monitoring is essential to ensure that court directives are implemented.

In *Krist Pereira v. State of Maharashtra and Ors* (Criminal W.P.No 1107 of 1996 Bombay High Court) in response to the death of a three year old boy in the Bhiwandi remand home, the Bombay High Court set up an Experts Committee to examine the conditions in childcare institutions in different parts of Maharashtra. The Experts Committee visited 21 institutions and submitted reports to the court. These reports indicated the distressing and pathetic conditions prevailing in the institutions visited. The Bombay High Court has constituted a permanent State Committee to monitor the functioning of childcare institutions and the juvenile justice system in Maharashtra. The Court also gave detailed directions on the setting up of Juvenile homes and Children's homes in every district, for the setting up of after care and rehabilitation institutions and for filling up vacant positions on the Juvenile Justice Board and the Child Welfare Committees. Regarding living conditions, directions were given on ensuring clean and proper toilets, provision of medical care, hygienic kitchens where adequate and nutritious food may be cooked and served, and that each child must be given at least two sets of clothes every year. The directions also laid down that the Rs. 500 per month allocated per child must be spent on food, clothing and other needs of the child and not for administrative purposes.⁴¹

Measures for monitoring conditions in Child Care Institutions

1. At the outset, it is important to have district-wise information on the exact number, capacity and type of child care institutions. This can be obtained from the concerned State Department under the Right to Information Act.
2. Depending upon the information available it is important to pressurize the state government for fulfilling its obligations to set up these institutions with their corresponding and relevant authorities.
3. Legal intervention may be sought through the High Court in case states fail to respond adequately to the demand to set up the requisite number of institutions
4. Ensure that vacancies on the Juvenile Justice Board, Child Welfare Committees, Board of Control and Inspection Committees are filled with responsible members. Ensure that there is adequate space on such committees for members of child rights groups.
5. Ensure that there is continued dialogue and interaction with these bodies regarding monitoring living conditions in child care institutions.
6. Press for an effective grievance redressal mechanism for children in child care institutions – toll free phone lines and stamp free post cards should be made available for them to contact children's organizations, children's councils, ombudspersons in times of crisis. The existing children's help lines and support structures should be given much more publicity and support. They should also work with better co-ordination among themselves.⁴²
7. Ensure that all children have the opportunity to talk to members of child rights organizations and lawyers immediately after they are admitted to the child care institution.

41 'Child Rights and the Law: A guidebook for legal interventions', Maharukh Adenwala, 2002, Childline India Foundation.

42 'The Alternate Report by the National Movement of Working Children, India', submitted to the Committee on the Rights of the Child, July 2003

Residential Care for Children⁴³

Child Rights and You (CRY) has floated the Quality Institutional Care and Alternatives for Children [QICAC] initiative, to bring together NGOs, individuals, policy makers and state departments for ensuring that the rights of children are safeguarded and their best interests are always at the forefront.

Promoted as a collective think- and action-tank, the QICAC has been evolving over the past five years. The initiative began in Karnataka in 1999, in Tamil Nadu in 2002 and in Andhra Pradesh in 2004. The initiative has brought together close to 100 NGOs and has spread awareness of and support for its guiding principles across the length and breadth of the region.

The Orphanages and Charitable Homes Act, the umbrella legislation for residential care institutions, has come under a lot of scrutiny in Tamil Nadu and Karnataka following the QICAC initiative. The long dormant monitoring mechanism provided for in the Act has been revived, and a Board of Control instituted as a consequence of the combined pressure and lobby of the different stakeholders in the states. The Board will not only grant licences but also monitor the functioning of the homes and institutions under its purview. The challenge for the future lies in ensuring that these are not just piece-meal responses by the states, and are instead progressive, sustainable actions.

In the aftermath of the tsunami, the significance and the dire need for community-based options to rehabilitate children (orphans/semi-orphans) was sorely felt. Upon reviewing the situation at the ground level in the affected areas of Tamil Nadu and Andhra Pradesh, it was noticed that the state viewed the institutionalization of children as the first option, and often the only one. There were blind directives to District administration to increase admissions to the orphanages. As the administration was invariably ill-equipped to understand or assess the needs of the affected children and their families, such directives led to a random increase in the numbers in the orphanages - even of children with parents. Families were actually being encouraged to give up their children for adoption!

Extended families and communities do not want to give up their children, and children themselves do not want to stay in residential institutions, and prefer to remain in their communities. The state, however, was terribly insensitive to this, to the extent that some communities even hid their children to prevent forced institutionalization by the government.

The QICAC's focus in the tsunami-affected areas has been to ensure support and to enable sustainability of the community initiatives established to protect and care for the children. The QICAC has also pushed for the involvement of local panchayats, who know and understand their communities and children best. The initiative also seeks to involve local communities in evaluating the institutions set up in their areas. The long-term plan is to ensure that all institutions are linked with the panchayats and other community groups, thus improving their functioning and facilitating monitoring as well.

In Karnataka, the QICAC concept has been carried in a concentrated manner to all the members of the Child Welfare Committees across the state since it is through them that vital decisions about institutionalization and restoration to the families are made with respect to hundreds of children every month.

Vidya Raman, 01 May 2006

43 Excerpted from 'Residential Care for Children', Vidya Raman, <http://www.indiatogether.org/2006/may/chi-qicac.htm> May 2006

8. Press for application of the Control Model Rules on Juvenile Justice, 2007 and formulation of State Rules in accordance with the Central Model Rules.
9. Lobby for Registration of all child care institutions under Sec. 34(3) of the Juvenile Justice (Care & Protection of Children) Act 2000, (As amended in 2006) and Rule 71 of the Central Model Rules. This will ensure standards of care and protection are met by all such institutions.
10. Follow-up on the formation of Childrens Committees and Home Management Committees in all institutions for children in need of care and protection mentioned under Rules 55 and 56 of Central Model Rules on JJ or such other State Rule as the case may be.

The Committee recommends that the State party ensure regular, frequent and independent monitoring of institutions for juvenile offenders.

-para. 81 CRC/C/15/Add.115

Undertake systematic education and training on the provisions of the Convention for all professional groups working for and with children, in particular, judges, lawyers, law enforcement officials, civil servants, municipal and local workers, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers;

- para. 24 (c) CRC/C/15/Add.228

11. Develop programmes for periodic training on child rights, housing rights and human rights to all members of the Juvenile Justice Board, Child Welfare Committees, Inspection Committees as well as the staff of various child care institutions

Children of migrant labour and the right to adequate housing

A large proportion of those who migrate in today's context do so for economic reasons. Unfortunately, migration among the working classes is not merely to enhance the present standard of living, but, in some cases, merely to survive. Some of the reasons for migration among the working classes are as follows:

1. Shrinking rural livelihood options
2. Land alienation
3. Casualization of labour and job insecurity
4. Famines and droughts
5. Displacement and eviction
6. Caste based discrimination
7. Armed conflict
8. Natural calamities
9. Domestic violence

Living Conditions of the Migrant Labour

- In most cases, the living conditions of migrant labourers, whether rural-to-urban, rural-to-rural, seasonal, individual or with the entire family, are extremely poor.
- Migrants in such situations are forced to live in tents or makeshift homes in public spaces, pavements etc.
- Most of these settlements lack basic amenities such as potable water, sanitation and electricity.
- Lacking 'resident' status, many migrants do not have access to ration cards.
- Poverty and ignorance also makes it difficult for them to access the health care system.
- Lacking political voice due to their non-resident status, many of their demands, needs and concerns go unheard.



yossi05

How is the right to adequate housing of children of migrant communities violated?

Children of such migrant communities suffer on several accounts. Some of their housing related rights violations are as follows:

1. Makeshift housing in which most migrant workers live does not provide adequate protection to their children from harsh weather conditions.
2. Makeshift housing also results in the lack of security, an essential element of the right to adequate housing. In such conditions children are made highly vulnerable to physical and sexual abuse as well as trafficking.
3. Lack of secure employment and living conditions often forces young girls of migrant families into prostitution.
4. Early marriages of girls of migrant communities is common as very often parents prefer to get their adolescent daughters married rather than expose them to various rights abuses.
5. As most places do not have designated areas for migrant workers to live in, they are forced to live on pavements and in public areas, and can therefore be evicted anytime.
6. Eviction and insecure living conditions often have a lasting impact on children's rights to survival, protection and development; they also expose such children to physical and sexual violence.
7. Inadequate living conditions such as lack of proper toilet and solid waste management facilities can have a severe impact on children's health.
8. Migration severely impacts children's access to education and there is often a high school dropout rate among children of migrant workers.
9. Due to lack of proper housing and the inability to access local anganwadis, many children accompany their parents to their work sites, which in most cases do not have crèches. Once again children are exposed to the harsh weather conditions and also to accidents at the place of work.

As seen in the case of Nasik in Maharashtra, since there is no space allocated for seasonal adivasi migrants to live, most of them make their homes at the Naka or depot, an area which, over the years, has become the point from where private contractors pick up labour on a daily basis. In order to ensure that no illegal settlements come up at the naka, local police ensure that the migrants' homes are made only with plastic sheets and that during the day all shelters dismantled. Nothing that could be deemed to constitute permanent building material is allowed to be used. As a result, these communities including their children are exposed to the vagaries of nature. The area where the seasonal migrants in Nasik live lacks water and sanitation facilities. The absence of adequate toilet facilities and privacy especially for girls and women raises serious concerns of abuse and violence. As most contractors do not provide crèches, families are forced to leave their children in the care of those members of the community who may not have found work for that particular day. One of the biggest concerns of the community is the safety of their children during the day. The naka is located at a busy junction and, with the absence of a demarcated area for housing, there is always a chance that infants and babies will be run over by the vehicles on the road. Given the extreme poverty and the precarious living conditions, hardly any children of this community go to school. They either stay back to look after their younger siblings or join their parents at their places of work. As access to state subsidized food shops is dependent on your resident status in the city, most migrant families do not possess the all important 'ration card'. As a result, many children of the community suffer from malnutrition along with a variety of other illnesses.⁴⁴

10. Lack of proper housing and crèches at the work site cases also means that older children become care-givers and have to look after the younger siblings.
11. Many children also end up working along with their parents and are thus sucked into the labour market.
12. In cases where only the male members migrate in search of work, the burden on women and the adverse impacts on the safety and security of children increase significantly. Very often since wages are low and consequently remittances are miniscule, women and older children are forced to join the labour market. This has severe adverse impacts on the child's right to education, health, and food and also exposes the child to physical and sexual abuse. It has been noted that in many cases, young girls accompanying their parents to work sites are often victims of sexual abuse at the hands of the 'Mukadam' / 'Thekedar' or middle-man.

A fact finding report on the use of child labour in mining in Karnataka brought out the conditions of child workers in the industry.⁴⁵ The main findings include the fact that most children engaged in mining were migrant labourers mostly belonging to adivasi and dalit families, that they were involved in extremely difficult tasks, that the high dropout rate in the schools in the area was due to the demand for child labour in the mines and that the working conditions were highly exploitative and even abusive. Several children were the sole earning members of the family since their parents were suffering from mining-induced chronic health problems. As most children came from conditions of inadequate housing, working in the mines pushed them further into deprivation, especially with regard to living conditions.

⁴⁴ Disha foundation, an organization working on issues concerning children of seasonal migrants in Nasik has been engaging with some success with the local district administration for the provision of temporary housing facilities to the seasonal migrants in the town.

⁴⁵ This fact finding mission was conducted by Mines Minerals and People, HAQ: Centre for Child Rights, MV Foundation, Campaign Against Child Labour with the help of other social rights activists.

While some semi-casual workers were given makeshift bamboo huts, all migrant workers were given only a small plastic sheet to construct a tent of two by two feet for the entire family to live in. As the tents were too small for the entire family to sleep in, many slept in the open. Since no toilets were provided, privacy and security of women and girls was a serious concern. Due to lack of drinking water facilities on site, women and children were forced to walk long distances after their working hours or early in the morning to fetch water from the neighbouring villages. The rest of the water requirements were met from the mine pits by collecting the contaminated water. Children did not have any water to wash their hands before eating resulting in several health problems. Essential services like electricity and access to government-subsidized ration shops were not available to the migrant workers, thus impacting upon their right to food. Since most of the workers were migrant labour there were no education facilities for their children.

Laws / Policies

Work conditions for migrant labour are mainly covered by the Inter-state Migrant Workmen (Regulation of Employment) And (Condition of Service) Act 1979.

While the Act lays great emphasis on registration of migrant workers and licenses for contractors, it is extremely weak when it comes to conditions of work. The Act makes no special concession keeping in mind the specific conditions of migrant workers except makes it mandatory for employers to provide a meagre displacement allowance and a journey allowance.

The other laws applicable in the case of migrant workers are the Minimum Wages Act, 1948; the Contract Labour (Regulation and Abolition) Act, 1970; the Equal Remuneration Act, 1976; and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

While the employer is required to 'provide suitable housing to workers' under the Contract Labour Act, it is largely unimplemented. Additionally while crèches are to be provided under the Contract Labour Act, Mines Act and Factories Act 1948, these benefits are available only to permanent employees and as a result they do not benefit migrant workers.

The National Crèche Fund, set up by the Department of Women and Child, now under the Union Ministry of Women and Child Development in 1994, gives assistance to voluntary organizations to set up crèches for children of working mothers.

As most migrant workers are a part of the unorganized sector workers, of late attempts have been made for legislation to address the concerns of this sector. Following the recommendations of the Second National Commission of Labour (NCL, 2002), the central government has mooted a draft law (The Unorganized Sector Workers Bill, 2003) in order to identify workers employed in the unorganized sector to provide them with basic social security. The scope of the Act will extend to all workers in the unorganized sector, whether directly or through an agency or contractor, whether for one or several employers and whether a casual or temporary worker, a migrant worker, or a home based worker self-employed or employed for wages). Central and state governments shall constitute an Unorganized Sector Workers' Central Board' and similar state boards for the administration and coordination of the Act at central and state levels.⁴⁶

The National Campaign Committee for Unorganized Sector Workers has proposed an alternative bill that covers not only issues concerning social security but more

Apart from the lack of implementation, most of these Acts have been found to be completely inadequate in addressing the issues of migrant workers.

⁴⁶ 'An overview of migration in India, its impacts and key issues' Ravi Srivastava and S.K. Sasikumar, prepared for and presented at the Regional Conference on Migration, Development and Pro-Poor Policy Choices in Asia, organised by the Refugee and Migratory Movements Research Unit, Bangladesh, and the Department for International Development, UK, on 22–24, June 2003

importantly in Chapter II, section 8 it covers labour rights and entitlements and makes it the responsibility of the relevant state government to ensure special protection for migrant workers and their families in providing ration cards, housing, medical help and education to their children.

Recognizing that a large portion of children of migrant labour join the labour force, and consonant with article 24 of the Indian Constitution, The Child Labour (Prohibition & Regulation) Act, 1986 of India prohibits the employment of children below the age of 14 in factories, mines and in other forms of hazardous employment, and regulates the working conditions, including hours of work for children in other employment. However strict implementation of this Act continues to be a problem. Additionally, since child labour continues to be employed in 'non-hazardous' work, there needs to be provision of adequate housing from a child rights perspective for child labourers where required.

Who can be held responsible?

Apart from the Prime Minister who is ultimately accountable as head of the government in the centre and Chief Ministers of states, the following list includes some of the relevant authorities who may be held responsible and their intervention may be sought

1. The Union Ministry of Labour
2. Union Ministry of Women and Child Development
3. Chief Labour Commissioner
4. Departments of Labour, at state levels
5. Local district administration

Strategies to Protect and fulfill the right to adequate housing of children of migrant workers

For immediate action

1. Dialogue with employers for provision of space for housing or housing to at least migrant workers with children.
2. Dialogue with the district administration in order to grant children of migrant communities' access to the anganwadis in their particular area.
3. Ensure that migrant families bring with them birth certificates of their children and proof of residence (or a letter from their gram panchayat). A birth certificate is useful in getting the child admitted in the local anganwadi.
4. As done in the case of Mobile Creches and the Delhi Contractors Association, dialogue with all involved parties to provide for crèches on site so that children of migrant communities have a safe place to play and rest while their parents are at work.
5. Ensure and work with the district administration that migrant workers are not evicted from the areas that they occupy till a long-term solution is found.
6. Advocate for school education for migrating children.
7. Intervene to help children access benefits of education schemes if any run by the State Government for children of migrant labour.



For the long-term

1. At the very outset, it is important to raise awareness of the contribution of migrant communities to the economy and development of the area to which they migrate, in order to draw attention of local administrative authorities.
2. It is also necessary to document the type and nature of migration to the city in order to cater to their needs and rights.
3. Advocate for a health card for all that can help migrating populations seek health care any where in the country.
4. Amend labour laws to include the provision of housing to all permanent and temporary employees.
5. All such housing provided must be in compliance with standards set according to the right to adequate housing.
6. Crèche facilities must be made available to all temporary and permanent employees.
7. Ensure that conditions and facilities in crèches comply with human rights and child rights standards.
8. All migrant labour must be provided with equal access to health centres and ration shops as permanent residents of the area.
9. The Maharashtra government has made provision for temporary ration cards to be given to seasonal migrants. Press with your state government for providing similar facilities.
10. In the case of seasonal migrant workers, dialogue with the local district administration to provide transit camps in compliance with right to adequate housing standards. Disha, an organization in Nasik – has managed to make significant headway in convincing the district administration to provide such transit camps for seasonal migrants.

11. Work with the state education department to ensure that children of migrant communities are able to easily access local schools and that the time spent in schools in the areas of migration is recognized in their original schools on return.
12. Work with the district administration and representatives of the labour commissioner to try and arrange for ration cards of seasonal migrant families to be considered as valid in the place of migration for a fixed period of time every year.

For the past three years, Janarth has seriously involved itself with the question of the education of children of migrant sugarcane cutters. As is well recognized now this is a major group of children who drop out of the mainstream of primary education because they migrate with their parents during the second school term, which coincides with the sugarcane-cutting season in Maharashtra. However, as these migrating families mostly go back to their villages at the end of the season, it was thought that the most effective intervention to prevent school dropouts would be to provide alternative schools, now known as the sakharshalas, at the destination sites. This has enabled hundreds of school children to continue their schooling during the second term, to appear for the annual class examination conducted by the sakharshala, obtain a passing certificate and thus get promoted to the next higher class. Janarth has liaised with the State Education Department to have the class-passing certificate that they issue, recognized by the Department. This makes it easy for the heads of village school to admit children to the higher classes when they return to the villages at the end of the sugarcane-cutting season, which fortuitously coincides with the beginning of the new academic year.⁴⁷

⁴⁷ 'Janarth Sakharshala: The Sending Villages Report', Mrinalini Desai, Working Paper Series No. 23, National Centre for Advocacy Studies, December 2005

Summing up

The primary purpose of preparing this Handbook on Children and Housing has been to give due recognition to the importance of the right to adequate housing in the fulfilment of the child's rights to survival, protection and growth. As the Handbook clearly establishes, from a human rights perspective, housing is understood as much more than four walls and a roof, and includes an environment which is conducive to a life of security and dignity for all. The right to adequate housing therefore includes security of tenure as well as access to public goods and services, a safe and healthy environment, adequate food, health care, education, livelihood etc. This approach also recognizes and provides space for the special needs of vulnerable groups including children vis-à-vis housing. Thus, in bringing out these interlinkages between the right to adequate housing and child rights, it becomes clear that the type and extent of a housing rights violation, especially in the case of children, can provide fair indication of their vulnerability to other human rights violations.

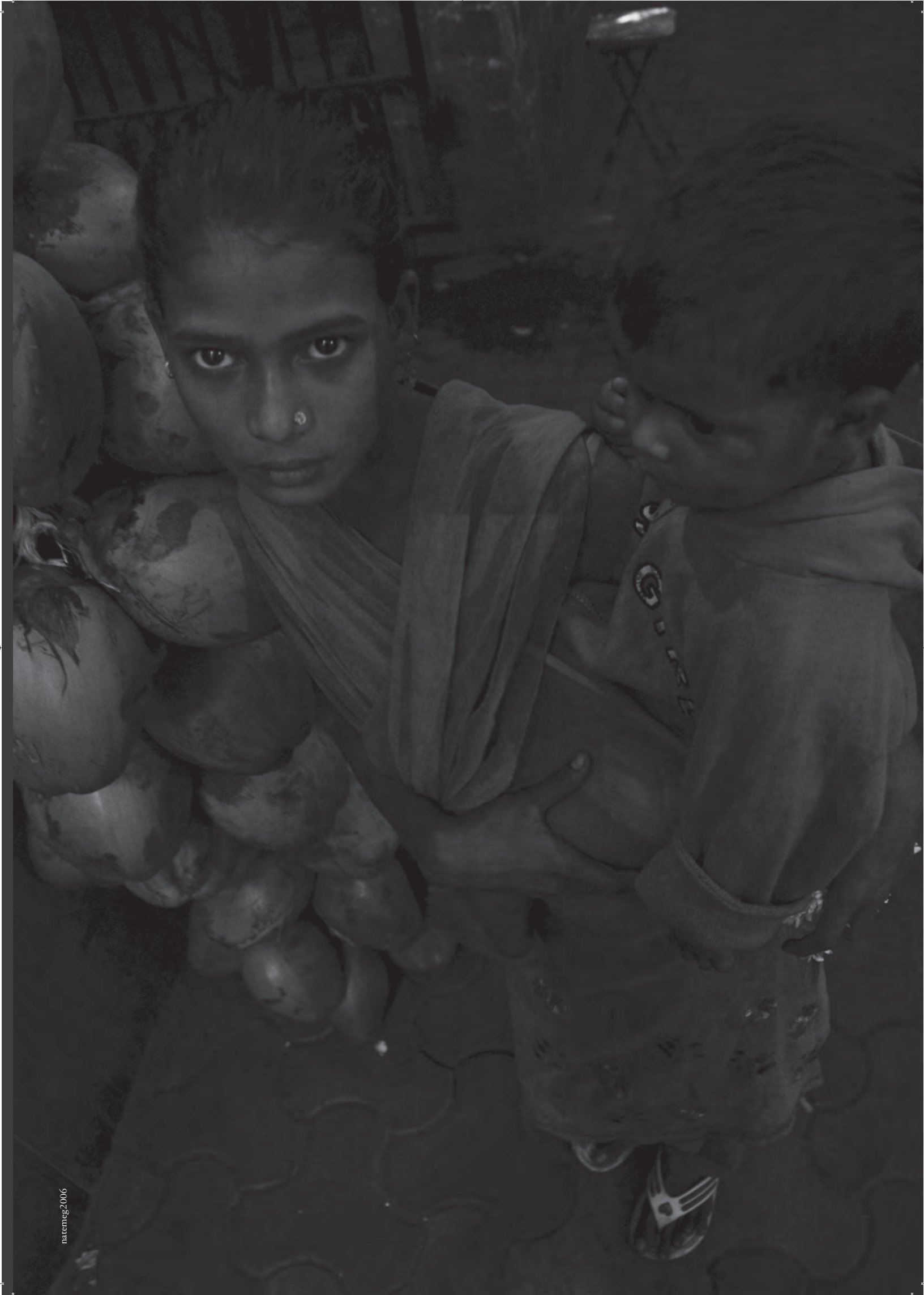
While the Handbook provides an introduction to various laws that may come into play in the children and housing context, the list is not exhaustive but merely indicative. Strategies mentioned to mitigate impacts of a housing rights violation on children or to protect children from the violation of their right to adequate housing have been drawn from the experiences of various child rights, housing rights and human rights groups. Needless to say, these strategies are contextual in nature and will have to be adapted to suit local conditions.

We hope the information provided will be useful to groups and individuals working on both child rights as well as housing rights. We hope that this Handbook will help groups build further on this issue with a view to achieving every child's right to adequate housing.



V

Annexures



Annexure I

Some of the major Constitutional provisions and laws for the promotion of child rights are as follows:

Fundamental Rights

- Article 14: “The State shall not deny to any person equality before the law or the equal protection of laws within the territory of India.”
- Article 15: “The State shall not discriminate against any citizen... Nothing in this Article shall prevent the State from making any special provisions for women and children.”
- Article 21: “No person shall be deprived of his life or personal liberty except according to the procedure established by law.”
- Article 21A: State shall provide free and compulsory education to the children of the age of six to fourteen years in such manner as the state may, by law determine (This has not been notified).
- Article 23: “Traffic in human beings and beggar and other forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.”
- Article 24: “No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”

Directive Principles of State Policy

- Article 39: “Right of children and the young to be protected against exploitation and to opportunities for healthy development, consonant with freedom and dignity.”
- Article 42: “Right to humane conditions of work and maternity relief.”
- Article 46: “To promote educational and economic interests of weaker sections to protect them from social injustice.”
- Article 47: “The State shall endeavour to raise the level of nutrition and standard of living and to improve public health.”

1890 – The Guardian and Wards Act

1948 – The Factories Act

1956 – Hindu Adoption and Maintenance Act

1958 – Probation of Offenders Act

1960 – The Orphanage and Other Charitable Homes (Supervision and Control) Act

1986 – Immoral Traffic Prevention Act

1986 – The Child Labour (Prohibition and Regulations Act)

1992 – The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act

1994 – The Pre-natal Diagnostic Technique (Regulation, Prevention and Misuse) Act

1996 – The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act.

2000 – The Juvenile Justice (Care and Protection of Children) Act.

2003 - National Charter for Children

2005 – National Plan of Action for Children 2005

2005 – The Commissions for the Protection of Child Rights Act

2006 – The Prohibition of Child Marriages Act

The Commissions for Protection of Child Rights Act 2005.

Annexure II

Below are the contact details of the various National Commissions whose involvement can be sought in case of a child rights violation through a written complaint sent to the chairperson in Hindi or any other Indian language, or in English.

1. **National Human Rights Commission**
Faridkot House, Copernicus Marg,
New Delhi – 110 001
Phone – 011 2338 2742
Fax – 011 2338 4863
2. **National Commission for Women**
4 Deendayal Upadhyay Marg
New Delhi – 110 002
Phone – 011 2323 7166
Fax – 011 2323 6154
3. **National Commission for Minorities**
5th Floor, Loknayak Bhavan,
Khan Market
New Delhi – 110 003
Phone – 011 2469 0592
Fax – 011 2469 3302
4. **National Commission for Scheduled Castes**
5th Floor Loknayak Bhavan
Khan Market
New Delhi – 110 003
Phone – 011 2463 2298
Fax - 011-2462 5378
5. **National Commission for Scheduled Tribes**
Sixth Floor, Loknayak Bhavan
Khan Market
New Delhi – 110 003
Phone – 011 2463 5721
Fax – 011 2462 4628
6. **National Commission for the Protection of Child Rights**
5th Floor, Chanderlok Building
36 Janpath
New Delhi – 110 001
Phone – 011- 23724023
Fax - 011 -23724026

Annexure III

Parallel Reporting⁴⁸

Parallel or Alternate reporting is a tool adopted by treaty bodies to involve non-governmental organizations to participate in the process of monitoring adherence to the particular treaty.

All treaties have a treaty body or Committee to monitor the performances of the States that have ratified the particular treaty. The main purpose of treaty body or the Committee is broadly two fold:

- a) to monitor adherence to the treaty through the reporting process where a State party is required to submit a report on status of the particular right and subsequent progress made in realizing the right every five years;
- b) to provide official explanations or interpretations of the particular right through General Comments or General Recommendations.

The UN Committee on the Rights of the Child consists of 10 experts who monitor the implementation of the CRC (doctors, lawyers, social scientists) who are elected in their individual capacities through secret ballot, nominated by their Governments. Elections take place every 2 years where half the Committee is elected for a 4-year period. A Chairperson, three Vice Chairpersons and a Rapporteur are elected for a 2-year term.

Functioning of the Committee

- Meet twice a year in Geneva for 2 weeks to examine State Parties Reports.
- Some members assemble for an extra pre-sessional week to prepare for the forthcoming session.
- The pre-sessional working group also invites NGO networks, experts, UN Experts Agencies for a dialogue and written submissions on the Country Reports that are due for examination at the future sessions.

Reporting Procedure for State Parties

- State Parties are required to report on progress made with regard to the Convention after two years for the first time after ratification.
- Thereafter reporting is required every five years.
- Reporting needs to follow the Guidelines made available by the Committee.
- The State Party is represented by a high level government official. The examination is conducted in public. However the actual exchange is only between the Committee and the State Party representative.

Parallel or Alternate reporting:

- NGOs are also given space in the monitoring process through allowing the submission of parallel or alternate reports that provide the Committee with additional information to that provided by the State.
- NGOs can also contribute to the monitoring process by providing a list of questions that can be raised by the Committee in its interaction with the State Party.

It is important to keep a track on when country reports are being considered. It is best to attend to the treaty body, both in the lead up to, and during the review of your government performance. You can also make oral or written submissions to the respective committees.

⁴⁸ Excerpted from 'Children and Right to Adequate Housing: A Guide to International Legal Resources', HAQ: Centre for Child Rights and Habitat International Coalition, New Delhi 2002.

Points to remember while preparing an Alternate Report to the Committee on the Rights of the Child

- Report should follow Committee Guidelines.
- Concrete Recommendations should be made.
- Report should be less than 20 pages.
- Report must be written in English, French or Spanish.
- An abstract or summary of the report in English is essential.
- Report must be sent to the Committee three months after the Government Report has been submitted.

With reference to children's right to adequate housing, the reporting guidelines to States are as follows⁴⁹:

For Article 16 States are required to indicate:

Measures adopted to prevent any arbitrary or unlawful interference with the child's privacy, family, home or correspondence as well as any attack on his/her honour and reputation.

Provide information on the protection provided by the law against such interference or attacks, and the remedies made available to the child.

Information should also be provided on specific measures adopted for children placed in institutions for treatment, care or protection, including in judicial or administrative proceedings.

For Article 27 States are required to provide information on:

The measures adopted to recognize and ensure the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;

Relevant indicators used to assess such as an adequate standard of living, and its incidence among the child population, including gender, age, region, rural/urban area, social and ethnic origin and family situation;

Criteria established to assess the ability and financial capacity of parents or others responsible for the child's development, as well as to identify those conditions;

All measures taken, in accordance with national conditions and within the State Party's means, to assist parents and others responsible for the child to implement this right, including the nature of the assistance made available, its budget implication, its relation to the cost of living and its impact on the population; where relevant, the information provided should be disaggregated, inter alia by region, rural/urban area, age, gender, and social and ethnic origin;

The measures adopted to provide, in case of need, material assistance and support programmes, particularly with regards to nutrition, clothing, housing, indicating, inter alia the nature of such assistance and programmes, the population addressed by them, including gender, age, rural/urban area, social and ethnic origin, the proportion of the budget allocated, the coverage ensured, the priorities and targets identified; Relevant measures adopted as a follow-up to the declaration and plan of action adopted by the United Nations Conference on Human Settlements (Habitat II);

Reports should also provide information on the progress achieved in the implementation of these rights, difficulties encountered and targets set for the future.

⁴⁹ 'Implementation Handbook for the CRC', UNICEF 1998 from 'Children and Right to Adequate Housing: A Guide to International Legal Resources', HAQ: Centre for Child Rights and Habitat International Coalition, New Delhi 2002.

Annexure IV

Application form for seeking information under The Right to Information Act, 2005

Date

DD	MM	YY
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The Public Information Officer,

Sir,

I hereby request you to provide following information under Right to Information Act, 2005:

Particulars of information required (All fields are mandatory):

(i) Subject matter & Description of information required:

(ii) The period to which the information relates:

From

DD	MM	YY
----	----	----

To

DD	MM	YY
----	----	----

(iii) Whether information is required by:

Post (<i>The actual postal charges shall be included in additional fees</i>)	In Person
<input type="checkbox"/> Ordinary <input type="checkbox"/> Registered <input type="checkbox"/> Speed	

(iv) Please enter any one of the following:

PAN card No	
Voter's card No:	
Passport No:	
Ration card No:	

I hereby declare and confirm that I am an Indian citizen and as such I am entitled to seek information under RTI Act, 2005. I have attached copy of my PAN card/ Voter's card/ Passport/ Ration card in support of my citizenship. I shall use this information for my personal purpose only. I assure and conform that in any case or/ and under any circumstances, I shall not (allow/cause) use/pass on/share/display/keep/circulate the information received, with any person or in any manner which would be detrimental to/against the interests of India. If any information /declaration turns out to be incorrect or false, I shall be responsible and liable for consequences apart from losing right to receive information.

Signature of the applicant

Place:

Date:

Full name of the applicant (Fill in Block letters):

Surname	First Name	Second Name

Address:

House No./ Bldg. Name
Street Name/Area
City & Pin Code
Telephone
E-mail

(For Office Use)				
Reference:	DD	MM	YY	Received by:
				<input type="checkbox"/> Post <input type="checkbox"/> E-mail
Sign and Name of receiving officer				

(For Office Use Only)

Follow Up Status

Application forwarded to:

Name:

Designation:

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Signatures of Receiving Officer

	Time	DD	MM	YY
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Information Received on

	Time	DD	MM	YY
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Information sent to applicant on	1st Reply (DD/MM/YY)	2nd Reply (DD/MM/YY)	3rd Reply (DD/MM/YY)	4th Reply (DD/MM/YY)
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Information has to be sent to applicant on /before Date: DD MM YY

Signatures (when the information was sent)

A non-profit society founded in 1999, HAQ: Centre for Child Rights is dedicated to the recognition, promotion and protection of the rights of all children. HAQ focuses on children in a holistic way - as Actors in society, as Citizens of today, and as Adults of tomorrow. We at HAQ strive to propel child rights into all mainstream efforts, governmental and non-governmental, and place it on the centrestage of national debate. HAQ while recognising the indivisibility of all rights, believes that the rights to Survival, Childhood, Equal Opportunity are the basis of every other right. These rights form the cornerstone of our work.

To carry forward its mandate HAQ undertakes research and documentation. It is actively engaged in public education and advocacy on children's rights. It also serves as a resource and support base for individuals and groups dealing with children at every level. It not only provides information, legal aid and referral service but also training and capacity building to all those working with children or on issues concerning them, and the children themselves.



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