



## FORCED EVICTION OF INDIVIDUALS- AN INTERNATIONAL PERSPECTIVE

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### ABSTRACT

Each year, there are evictions or threat of eviction of millions of people across the world. This often results in extreme poverty and destitute. It happens in both developing and developed nations. There are various reasons that have been stated varying from climate change, accelerating urbanization and globalization etc.

The paper dwells into the concept of forced eviction and brings about an understanding of the term. It also provides for the provisions present and that are often used in the international forum to solve the problem, as well as conventions and codes related to the same with importance to the forced eviction fact sheet of OHCHR and the special rapporteur report on adequate housing. It concludes by providing for suggestions and remedies to the persisting problem.

### INTRODUCTION

The definition of eviction states that, “to force someone to leave somewhere”<sup>1</sup>. Forced eviction is linked to the absence of legally secure tenure, which has a connection the right of

<sup>1</sup>Evict  
<https://dictionary.cambridge.org/dictionary/english/evict> accessed on 10/03/19.

adequate housing. It is usually a result of the following consequences,

- Arbitrary displacement.
- Population transfer.
- Mass expulsions.
- Mass exodus.
- Ethnic cleansing.
- Other practices.

Forced evictions have increased over the years as well as the level of violence had also increased relatively. Atleast 60 countries across the world has reported evictions in the past three years. Without discrimination it happens in both rich and poor countries, therefore affecting the lives of millions of children, men, woman and also putting jeopardy on the attainment of the Millenium Development Goals<sup>2</sup>.

### FORCED EVICTION

The international community has always been on the opinion that forced evictions are a gross violation of human rights, especially in respect of the right to adequate housing.<sup>3</sup> Human rights are considered to be independent, indivisible and inter-related. It's a violation right to remain, right to freedom of movement, right to privacy, the right to property, right to an adequate standard of living, the right to security of the person, the right to security of home, right to security of tenure and right to equality of treatment.<sup>4</sup>

<sup>2</sup> Millennium Development Goals  
[https://www.who.int/topics/millennium\\_development\\_goals/about/en/](https://www.who.int/topics/millennium_development_goals/about/en/) accessed on 10/03/19.

<sup>3</sup>United Nations Commission on Human Rights resolutions 1993/77 and 2004/28.

<sup>4</sup> Resolution 1993/77 of UN Commission of Human Rights and U.N sub-commission on *the protection*



Although various countries have ratified the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and other regional instruments also have been implemented, forced evictions still occur.

Forced evictions result in extreme poverty and an overall risk to right to life. Its also found to be cruel, inhuman or degrading and especially when carried out with violence or with discriminatory intent.

It can lead to indirect violation of political rights too, such as the right to vote. Often woman and girls are easily the most vulnerable in this, since they also face sexual violence due to eviction. It often has a psychological impact also. Access to justice is also a right that is often violated.

#### DEVELOPMENT-BASED EVICTIONS

It is often planned to serve the public good or public interest, but most of the time do not provide protection for the most vulnerable, procedural guarantees or due process. Large dams, mining, extractive industries, large-scale land acquisitions, urban renewal, city beautification or major international business or sporting events.<sup>5</sup>

Though the concept is to serve the public it often does not benefit those who need it the most. Slum clearance and forced evictions are often an attempt to meet this Goal,

which clearly shows that evictions are in fact a result of human interventions.<sup>6</sup>

#### PROHIBITION OF FORCED EVICTION IN INTERNATIONAL LAW

The following are the various provisions provided by the OHCHR in its forced eviction fact sheet<sup>7</sup>,

- The right to life (International Covenant on Civil and Political Rights, art. 6.1)
- Freedom from cruel, inhuman and degrading treatment (ibid., art. 7)
- The right to security of the person (ibid., art. 9.1) • The right to an adequate standard of living, including the right to adequate housing, food, water and sanitation (International Covenant on Economic, Social and Cultural Rights, art. 11, and related Human Rights Council resolutions)
- The right to non-interference with privacy, home and family (International Covenant on Civil and Political Rights, art. 17)
- Freedom of movement and to choose one's residence (ibid., art. 12.1)
- The right to health (International Covenant on Economic, Social and Cultural Rights, art. 12) The right to education (ibid., art. 13)
- The right to work (ibid., art. 6.1)
- The right to an effective remedy (International Covenant on Civil and Political Rights, arts. 2.3 and 26)
- The right to property (Universal Declaration of Human Rights, art. 17)

*and promotion of Human rights, Resolution 1998/9 on Forced Evictions.*

<sup>5</sup>Terminski, B. (2015) *Development-Induced Displacement and Resettlement: Causes, Consequences, and Socio-Legal Context*(Stuttgart: Ibidem Press).

<sup>6</sup>Steiner, J.H., P. Alston and R. Goodman (2008) *International Human Rights in Context: Law, Politics, Morals. Text and Materials*(Oxford: Oxford University Press).

<sup>7</sup>Forced Evictions Fact sheet No.25/ Rev. 1 [https://www.ohchr.org/Documents/Publications/FS25\\_Rev.1.pdf](https://www.ohchr.org/Documents/Publications/FS25_Rev.1.pdf) accessed on 15/03/19



- The rights to vote and take part in the conduct of public affairs (International Covenant on Civil and Political Rights, art. 25)

They cover the concepts on the way the evictions are decided, the way they are planned, the way they are carried out, use of harassment, threats, violence or force, and the result of the eviction.

Apart from this the fact sheet also states that various other laws both regional and international will be applicable when it is coupled with other concepts such as racial and sexual discrimination.

**FORCED EVICTION AND INTERNATIONAL HUMANITARIAN LAW**

Population transfers, mass expulsions, ethnic cleansing are some examples in which forced eviction violates international humanitarian law principles.

The Geneva Convention of 1949 and their additional protocols of 1977<sup>8</sup> prohibit the forced displacement of the civilian population and the extensive force used by military which are not necessary in the contexts of both international and non-international armed conflict, which can also amount to forced eviction.

Article 8 of the Rome Statute of the International Criminal Court<sup>9</sup> also states that war crimes also includes the extensive destruction and appropriation of property

<sup>8</sup> Geneva convention of 1984 <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm> accessed on 17/03/19  
<sup>9</sup>Rome Statute of the International Criminal Court <https://www.icc-cpi.int/nr/rdonlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf> accessed on 17/03/19

not justified by military necessity and carried out unlawfully and wantonly in the context of international or non-international conflicts.

Also states “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory” is a war crime.

The Guiding Principles on Internal Displacement<sup>10</sup> provides for protection on occasion of forced eviction which can also affect those who are refugees or internally displaced person’s nation and international human rights as well as humanitarian law which specifically protects against arbitrary and forced displacement.

**STATES AND OTHERS OBLIGATIONS**

There are often times when evictions are unavoidable due to public interest projects, to safeguard from derelict buildings or hazardous places. Though they should leave the evicted in a better place after it takes place. Courts also play a part in eviction in various instances.

It is the obligation of the state as well as the courts to conform to national and international standards, including the due process protections.<sup>11</sup>

<sup>10</sup> Guiding principles on internal displacement <https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html> accessed on 18/03/19  
<sup>11</sup> ESC (2009) *Guidelines On Treaty-Specific Documents to Be Submitted by States Parties Under Articles 16 and 17 of the International Covenant on*



In certain instances it has been followed like in The High Court of Delhi, India, used the basic principles and guidelines on development-based evictions and displacement to lay down that an eviction should not take place without the provision of alternative land and housing and that evictees should not be placed in a worse situation after eviction<sup>12</sup>

The following obligations must be followed,

- The prohibition of forced evictions must be of immediate effect and not dependent on resources.
- States must take all measures to prevent the occurrence of evictions.
- States have to protect all from forced evictions by third parties too.
- A human rights and protection of due process approach must be followed and always kept in mind.
- All alternatives to eviction have to be considered first.
- All projects should incorporate an eviction impact assessment.
- Right to information and meaningful consultation and participation should be respected.
- Legal and other remedies should be available always.
- It should not always result in homelessness.

United Nation agencies and international financial institutions such as the World Bank, Organisation for Economic Co-operation and Development<sup>13</sup> and other

*Economic, Social and Cultural Rights*, UN doc. E/C.12/2008/2, 24 March.

<sup>12</sup>*Sudama Singh and others v. Government of Delhi* (WP(C) Nos.8904 of 2009, 7735 of 2007, 7317 of 2009 & 9246 of 2009)

<sup>13</sup> CESCR (Committee on Economic, Social and Cultural Rights) (1997) *General Comment 7, Forced*

regional financial institutions also play an important role and have their own obligations that they must follow.

National accountability and monitoring in the form of legislative protections and judicial remedies as well as national human rights institutions must be provided and present. Civil society organizations and communities also play an important crucial role in raising awareness and monitoring forced evictions.

#### UNITED NATIONS SPECIAL PROCEDURE

Special Rapporteur in a 2007 report<sup>14</sup>, the UN guidelines on evictions, especially on adequate housing has focused on forced eviction and it often reports and intervenes to prevent and redress forced eviction since 2007. Basic principles had been drafted on the development based evictions and displacement.

Various rights such as right of food, right of land etc, has been given importance and the possibilities of prohibition of forced eviction has since been looked into.<sup>15</sup>

Apart from that the various other special procedures that monitor on forced evictions are,

*Evictions, and the Right to Adequate Housing*, Sixteenth session, UN doc. E/1998/22, annex IV at 113.

<sup>14</sup> Report of the Special Rapporteur on *adequate housing as a component of the right to an adequate standard of living*, Miloon Kothari

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/106/28/PDF/G0710628.pdf?OpenElement> accessed on 20/03/19

<sup>15</sup> Special Rapporteur on Housing (2007) *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, Miloon Kothari, UN doc. A/HRC/4/18, 5 February.



- The Special Rapporteur on violence against women
- The Special Rapporteur on the rights of indigenous peoples
- The Special Rapporteur on the human rights of internally displaced persons
- The Special Rapporteur on contemporary forms of racism
- The Special Rapporteur on the situation of human rights defenders
- The Special Rapporteur on torture
- The Independent Expert on minority issues
- The Special Rapporteur on extreme poverty and human rights

- Resettlement, Rehabilitation and compensation: - Since eviction is unavoidable in various circumstances there should be rehabilitation and compensation and the most important resettlement offered.

**CONCLUSION**

The UN guidelines itself state that eviction is unavoidable and is necessary for the promotion of general welfare, but the Member State must provide or ensure fair and just compensation for any losses of personal real or other property or goods, including rights or interests in property.

Both the OHCHR forced eviction factsheet and the Gilon Kothari's guidelines must be utilized and followed in order to provide for a better condition to the evicted. There could have be inclusions of operational and government accountability as well as the process and plans that are to be followed for an effective utilization of the same.

Though eviction is unavoidable and necessary for public interest, the same public interest must be kept in mind while exercising eviction and fundamental human rights and humanitarian law must be kept in utmost importance and consideration.

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**SUGGESTIONS AND REMEDIES FOR FORCED EVICTION**

Some of the remedies that can be applicable for the individual who have faced eviction or for the states to take into consideration are,

- A fair hearing: - Often the complaints are mostly on the reason of fair trial not being held, through fair trial the evicted can come to an understanding and go forward.
- Access to legal counsel: - Since the evicted are often thrown into poverty after the eviction, they can't afford legal counselling, therefore one of the important systems needed is access to legal counsel.
- Legal aid: - Another main aspect, that is a fundamental right and should be upheld is right to legal aid.
- Return: - The option of returning for the evicted must be given.
- Restitution: -The evicted should be restituted back to their original state after eviction.