



# HOUSING AND LAND RIGHTS NETWORK

## Tool Story:

### The Background and Evolution of the HLRN Violation Impact-assessment Tool

Despite strict prohibitions in international human rights law, forced evictions and displacement of households and communities from their homes and habitats is a phenomenon that has gained unprecedented support from both the state and private actors, and continues to accelerate across regions. Most of these evictions are rationalized on grounds of “public purpose,” which continues to remain undefined and loosely interpreted by governments and development partners.

Such violations of the human right to adequate housing and land result from a range of causes and contexts, including slum demolitions, urban renewal, environmental conservation, violent conflicts, infrastructure projects, mega-events and special economic zones. Forced evictions violate a bundle of human rights, including rights to land, adequate housing, security of person and the home, health, work/livelihood, food and water, including access to natural resources as means of subsistence. They also, *prima facie*, breach international treaties, deepen the suffering of often already-impoorished communities and lead to development disparities across the globe. These practices continue also despite ambitious pledges to sustainable development, leaving no one behind, as in the 2030 Agenda (2015)<sup>1</sup> and the “New Urban Agenda” (2016).<sup>2</sup>

In light of these global commitments, the need to adopt enforceable standards for human rights in development that regulate eviction and displacement is all the more urgent. In the absence of comprehensive and enforced human rights-based laws and policies on housing and rehabilitation within many states and in all spheres of government, central and local, we can only but rely on the applicable international norms to fill local legal and/or policy gaps, even when those instruments are necessarily broad in nature so as to apply to all states. These begin with the international recognition of “forced eviction as a gross violation of human rights, in particular the right to adequate housing,”<sup>3</sup> through the acclamation of legally defined reparations for victims of such gross violations.<sup>4</sup> Meanwhile, as the relevant legal sources and standards apply to all spheres of government and public authorities, those individual public servants and their institutions are likewise obliged to harmonize their own laws and policies to meet the minimum standard of human rights.

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<sup>1</sup> Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, 21 October 2015, at: <https://undocs.org/A/RES/70/1>.

<sup>2</sup> New Urban Agenda, A/RES/71/256, 25 January 2017, at: <https://undocs.org/A/RES/71/256>.

<sup>3</sup> Commission on Human Rights, “forced eviction,” resolution 1993/77, 10 March 1993, at: <http://www.hlrn.org/img/documents/ECN4199377%20en.pdf>; and “Prohibition of forced evictions,” resolution 2004/28, 16 April 2004, at: [http://www.hlrn.org/img/documents/E-CN\\_4-RES-2004-28.pdf](http://www.hlrn.org/img/documents/E-CN_4-RES-2004-28.pdf).

<sup>4</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006, at: [http://www.hlrn.org/img/documents/A\\_RES\\_60\\_147%20remedy%20reparation%20en.pdf](http://www.hlrn.org/img/documents/A_RES_60_147%20remedy%20reparation%20en.pdf).

Since forced eviction was formally recognized as a “gross violation of human rights, in particular the human right to adequate housing” in 1993,<sup>5</sup> this principle has been reaffirmed repeatedly in legal and global policy instruments. These include authoritative interpretation of states’ obligations under treaty,<sup>6</sup> as well as the repeated commitments of states in the Habitat Agenda (1996) to “protect from, and redress forced evictions.”<sup>7</sup> States renewed that pledge at Habitat III (2016) by affirming that:

We commit ourselves to promoting national, subnational and local housing policies that support the progressive realization of the right to adequate housing for all as a component of the right to an adequate standard of living, that address all forms of discrimination and violence and prevent arbitrary forced evictions...<sup>8</sup>

We will encourage the development of policies, tools, mechanisms and financing models that...prevent ...arbitrary forced evictions and displacements and provide dignified and adequate reallocation.<sup>9</sup>

We will promote the development of adequate and enforceable regulations...combating and preventing speculation, displacement, homelessness and arbitrary forced evictions....<sup>10</sup>

In the search for greater specificity, the *Basic Principles and Guidelines on Development-based Evictions and Displacement* is an indispensable reference that the UN Special Rapporteur on adequate housing presented in his report in 2007 (hereafter *UN Guidelines*).<sup>11</sup> Developed through a thorough consultation process with international human rights law and development experts the *UN Guidelines* were developed with the consciousness of the multiple costs, losses and damages incurred at the various stages of evictions and displacement, whether or not some form of rehousing takes place. The *UN Guidelines* important tools for officers in all spheres of public service, as they call for a check on forced evictions and only sanction them under “exceptional circumstances,” consistent with states’ treaty obligations.<sup>12</sup> In the event that evictions must take place for *bona fide* public-interest reasons such as public health, security or the needs of a democratic society, the *UN Guidelines* elaborate the human rights principles that must be adhered to, as well as clear steps and procedural requirements to be followed before, during and after an eviction.

However, few efforts at promoting general principles succeeds to specify the true costs of any eviction or displacement activity carried out in the name of development, or other pretext. While those costs, losses and damages are incurred most directly by the households and communities undergoing the eviction or displacement, some of those consequences can be diffuse. When projects involve eviction and displacement—ranging in purpose from installing large-scale infrastructure or private capital accumulation—they, by definition, externalize costs that nonbeneficiaries have to pay. The consequent harm may give rise to any combination of results, including a spectrum of litigation, personal or corporate liability, unrest and a recipe for conflict and reprisals.

<sup>5</sup> Commission on Human Rights, “forced eviction,” resolution 1993/77, 10 March 1993, at: <http://www.hlrn.org/img/documents/ECN4199377%20en.pdf>.

<sup>6</sup> CESCR General Comment No. 7: “forced eviction,” 20 May 1997, contained in document E/1998/22, Annex IV, at: <http://www.hlrn.org/img/documents/GC7.pdf>; “Prohibition of forced evictions,” resolution 2004/28, 16 April 2004, para. 1, at: [http://www.hlrn.org/img/documents/E-CN\\_4-RES-2004-28.pdf](http://www.hlrn.org/img/documents/E-CN_4-RES-2004-28.pdf).

<sup>7</sup> The Habitat Agenda, A/CONF.165/14, 14 June 1996, paras. 40n, 61b, and 98b, at: [http://www2.unhabitat.org/declarations/habitat\\_agenda.asp](http://www2.unhabitat.org/declarations/habitat_agenda.asp).

<sup>8</sup> New Urban Agenda, *op. cit.*, para. 31.

<sup>9</sup> *Ibid.*, para. 107.

<sup>10</sup> *Ibid.*, para. 111.

<sup>11</sup> Basic Principles and Guidelines on Development-based Evictions and Displacement, A/HRC/4/18, 5 February 2007, at: [http://www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf).

<sup>12</sup> Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: “The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions,” 20 May 1997, at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en).

### *The Principles and Purposes of This Tool*

The present Violation Impact-assessment Tool reflects the lessons learnt from innumerable eviction and displacement cases over decades. Determining the true costs and other impacts incurred in the context of eviction and displacement remains a challenge that HLRN hopes to meet in large part by proven methods. That is the purpose and indispensable service of this Impact-assessment Tool, also known as the Eviction Impact-assessment Tool, “EViA Tool.” However, since its inception, the Tool has been found to be versatile and applicable also to other types of violations of the human right to adequate housing and land.

While global policy pledges still lack sufficient mechanisms for implementation, monitoring and evaluation, they remain nonbinding in nature. However, treaty obligations are binding and subject to periodic review. Hence, the principal duty for preventing and remedying forced evictions lies with the state, including all of its constituent parts.<sup>13</sup> That obligation applies equally to central government bodies, as well as regional and local governments and authorities, to ensure that their actions and the actions of third parties do not violate the human rights of affected persons and groups.

One of the useful tools noted in the *UN Guidelines* to assist public duty holders is that of an **eviction impact assessment (EViA)**. The *UN Guidelines* call for a mandatory eviction impact assessment to be conducted prior to any planned/proposed eviction. That assessment should take into consideration all potential costs, losses and damages that could be borne by individuals, households and communities in the event of an eviction or displacement.

For an eviction action or displacement to qualify as lawful, the process must meet a series of conditions, defined as required under states’ treaty obligations to respect, protect and fulfil the human right to adequate housing:

- (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;
- (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts;
- (i) Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.

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<sup>13</sup> The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social and Cultural Rights (ICESCR) each stipulate that: “The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.” International Covenant on Civil and Political Rights (1966), Article 50; International Covenant on Economic, Social and Cultural Rights (1966), Article 28. The Human Rights Committee (HRC) has noted further that “The executive branch that usually represents the State Party internationally...may not point to...another branch of government as a means of seeking to relieve the State Party from responsibility for an action incompatible with the provisions of the Covenant.” HRC, General Comment No. 31: “The Nature of the General Legal Obligation Imposed on States Parties to the Covenant” (2004), para. 4, at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2bfud3cPVrcM9YR0iW6Txaxgp3f9kUFpWog/hW/TpKi2tPhZsbEJw/GeZRASjdFuujQRnbJEaUhby31WiQPI2mLFDe6ZSwMMvmQGVHA%3d%3d>.

Where those affected are unable to provide for themselves, the state 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.<sup>14</sup>

Any process involving eviction or displacement that does not meet these minimum conditions is a form of *forced* eviction and, therefore, prohibited as a gross violation of human rights, in particular the human right to adequate housing. The process may also violate a bundle of related human rights as well. Those public or private parties who carry out such forced evictions remain liable for the losses, costs and damages arising from the violation, while the affected persons are entitled to reparations as defined in international law.<sup>15</sup>

While the prosecution of such parties may be the subject of needed legislative, law enforcement and judicial measures, this EvIA tool focuses consequences of those prohibited forced evictions and displacements with a view to realizing the human rights of their victims within the norms of reparations. Therefore, the purpose and intention behind the process of assessing the impact of evictions, as stated in paragraph 32 of the *UN Guidelines*, is to “secure fully the human rights of all potentially affected groups and communities, including their protection against forced evictions.”

In any eviction or displacement case, the *UN Guidelines* specifically provide that:

32. States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. “Eviction-impact” assessment should also include exploration of alternatives and strategies for minimizing harm.
33. Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly and marginalised sectors of society. All such assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed.
42. Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated.

Thus, any appraisal of evictions would have to capture material, as well as nonmaterial costs, such as psychological and social effects of the eviction and other indirect costs, including loss of children’s education, loss of access to adequate healthcare facilities, loss of livelihoods and access to critical natural resources, including water, forests, livestock and fodder. The disproportionate impacts of evictions on women, children, persons with disabilities, older persons, minorities, and other groups such as indigenous peoples also need to be considered.

While the *UN Guidelines* express the need for such an assessment to be conducted, they also do not specify the components or indicators of such a tool. The efforts recounted here, however, seek to meet that challenge by providing methods that meet the specificity required to fulfil the corresponding human rights duties to render reparations, including in the case of resettlement.

<sup>14</sup> General Comment No. 7, *op. cit.*, paras. 15–16.

<sup>15</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, *op. cit.*

Given the potential usefulness of this tool as a means to help assess, as well as to minimize and deter forced evictions, while also realizing justice for their victims, Habitat International Coalition's Housing and Land Rights Network (HLRN) has developed and tested the range of criteria and modalities of eviction impact assessment as an operational tool to share with the concerned public.<sup>16</sup>

### *Genesis and Evolution of the Tool*

HLRN's Violation Impact Assessment Tool builds on a previous HLRN tool known as the *Housing and Land Rights Violation Loss Matrix*, which has been used for several years to calculate both material and non-material losses resulting from forced evictions and other violations of housing and land rights.

That earlier *Loss Matrix* formed part of HLRN's encyclopaedic *Housing and Land Rights Toolkit* (2006),<sup>17</sup> which, in turn, grew out of an effort of Habitat International Coalition Members' efforts to monitor the progressive commitments of Habitat II (Istanbul, June 1996). Central to those pledges by UN Member states and UN specialized organizations was the promise—repeated 61 times in the outcome Habitat Agenda—to ensure “the full and progressive realization of the human right to adequate housing” and the repeated commitment to “prevent and remedy forced eviction,”<sup>18</sup> while considering also the particular impact of that gross violation on women.<sup>19</sup>

However, as early as 1998, it became apparent that UN Habitat, the designated UN agency responsible for coordinated implementation of the Habitat Agenda, lacked the vision, will and capacity to fulfil that designated role and/or to report accordingly.<sup>20</sup> Instead, it launched two campaigns that eventually merged in 2009 to form the “World Urban Campaign,” a UN-Habitat project originally created to generate private-sector interest and collaboration<sup>21</sup>

HIC's Housing and Land Rights Network then rose to the challenge to develop methods for HIC Members and others to monitor and evaluate the implementation of the Habitat Agenda's many commitments. That effort resulted in the *Toolkit*, which applied the methodology arising from the human right to adequate housing, its normative content and corresponding state obligations.

This historic evolution of the HLRN Violation Impact-assessment Tool converged and found consistency with the *UN Guidelines*, pursuing further the guidance to capture the costs, losses and damages arising at any and/or all stages of the possible violations of habitat-related human rights. This included those committed in eviction and displacement processes at every stage: pre-eviction, upon threat of an eviction, during eviction, and post-eviction. Thus, the HLRN EvIA Tool was designed to enlist components to be factored into the calculation of both material and non-material losses and also lead the user through the steps to be followed in the process.

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<sup>2</sup> The preliminary workshop to discuss the Impact-assessment Tool was held in Pune, India, and was co-hosted by Housing and Land Rights Network and National Centre for Advocacy Studies. Other participating institutions included: Indian Institute for Human Settlements, Youth for Unity and Voluntary Action, Tata Institute of Social Sciences, Environics, Kalpvriksh, and Eco Tools.

<sup>17</sup> *Housing and Land Rights Toolkit* (2006), at: <http://www.hlrn.org/toolkit/>.

<sup>18</sup> Istanbul Declaration on Human Settlements and The Habitat Agenda, paras. 40n, 61b, and 98b, A/CONF.165/14, 14 June 1996, at: [http://ww2.unhabitat.org/declarations/habitat\\_agenda.asp](http://ww2.unhabitat.org/declarations/habitat_agenda.asp).

<sup>19</sup> *Ibid.*, para. 61b.

<sup>20</sup> By the Habitat Agenda's first comprehensive policy review at Istanbul+5, the UN General Assembly resolved that UN Habitat operationalize a “Habitat Agenda Task Manager System” for that purpose. “Declaration on Cities and Other Human Settlements in the New Millennium,” adopted 9 June 2001, contained in document A/RES/S-25/2, 16 August 2001, para. 66, at: [http://www.hlrn.org/img/documents/2071\\_246\\_A\\_RES\\_S25\\_2.pdf](http://www.hlrn.org/img/documents/2071_246_A_RES_S25_2.pdf).

<sup>21</sup> UN-Habitat, “Strategic Plan, 2020–25: Group 1 Background Paper and Stakeholder Analysis,” 13 August 2018, p. 14.

As a largely preventive mechanism, as ordained by the *UN Guidelines*, the EvIA would be a pre-eviction modality, and, hence, would have to capture potential estimated costs and losses at stake in an eventual eviction or displacement. However, it is also instrumental for use during an eviction, when rapid action is needed to gather facts and arguments to stop the ongoing violations through judicial and/or administrative interventions. The EvIA Tool is also operable in the post-eviction context to analyse and assess actual losses incurred in both the short term and long term, in order to specify the entitlements of reparations and to negotiate for appropriate restitution, compensation at current market-based replacement values and rehabilitation arrangements toward durable solutions within the requirements of sustainable development.

In the course of events, HLRN and its partners have been able to apply the quantification methods to an ever-increasing variety of cases. Some of them involve violations unrelated to eviction and displacement as the primary feature. Since 2009, HLRN has used the tool and its method to assess the impacts of violations involving demolition, damage and dispossession in the context of natural disaster, conflict, occupation and war; privatization of housing, land and other habitat resources; as well as violations of rights to equal inheritance.

Throughout the cases in which the tool has been applied, as well as future iterations, HLRN has committed to promote its use in support of local efforts to quantify the affected persons' related costs, losses and damages with a methodology that housing and land rights defenders, field researchers and/or actual victims can adapt to their local situation. Each of the tool's various applications seeks to determine the widest range possible of values that typically are at stake in the practice of forced evictions, including those that rarely are recognized or documented. This comprehensive approach contributes to the precision needed to ensure a strong basis to substantiate reparation claims.

#### *Why Use This Tool?*

Each application of the Impact-assessment Tool adapts the quantification method in order to:

1. Identify the costs and losses prior to, during and after forced eviction and displacement, or other violations of the human right to adequate housing, land and other habitat-related human rights;
2. Expose the actual and full costs of purported "development" and other projects involving displacement by calculating and including all costs incurred by affected persons and households;
3. Prove that these violations deepen poverty and deprivation at all stages;
4. Deter future these violations by recording, and making perpetrators responsible for the full costs and losses they cause;
5. Provide guidance toward remedies, including application of the reparations framework (defined in international law as a right of victims);
6. Contribute to conflict resolution (in small-scale cases) and transitional justice (in large-scale cases);
7. Support local monitoring of housing and land rights violations in important cases;
8. Share the quantification experiences among HLRN Member organizations and other interested parties across regions.

As the tool and its method are firmly and explicitly rooted in the normative, human rights framework, with primary emphasis on the human right to adequate housing and habitat-related human rights, its ultimate purpose is to return the legal achievements of establishing this framework to the people, the subjects and bearers of those human rights. This seeks to clarify the related specific entitlements and

obligations, providing the greatest possible specificity to the right of victims to remedy,<sup>22</sup> restitution, reparation<sup>23</sup> and return, in the event of a gross violation, such as forced eviction as defined by the conditions and criteria cited above.

### *Who Should Use the EvIA Tool?*

HLRN's Impact-assessment Tool could be used as a practical instrument by social movements, campaign groups, civil society organizations, social activists, UN agencies and even governments working to prevent and remedy forced evictions and other violations. It could also be used as a resistance or adversarial tool that helps individuals and communities in negotiating with governments and private companies to prevent or find alternatives to evictions and displacements, and to demand just restitution based on international human rights standards and national legal obligations.

The tool also could be used to encourage relevant government departments to monitor evictions and to ensure the identification of independent institutions to monitor and investigate forced evictions and other violations. As stated in the *UN Guidelines*:

States should actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long-term consequences of evictions, including forced evictions that occur within their jurisdiction and territory of effective control. Monitoring reports and findings should be made available to the public and concerned international parties in order to promote the development of best practices and problem-solving experiences based on lessons learned.

States should entrust an independent national body, such as a national human rights institution, to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law.<sup>24</sup>

HLRN hopes that this tool will help enable the realisation of the human right to adequate housing across the world by preventing forced evictions and other violations, and, where they have occurred, contribute to remedy and restitution of human rights, ensuring the dignity and promised sustainable development of affected persons, groups, and communities, leaving no one behind. The following pages explain how.

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<sup>22</sup> See paragraphs 60–63 of the *UN Guidelines*.

<sup>23</sup> See paragraphs 64–67 of the *UN Guidelines*.

<sup>24</sup> *UN Guidelines, op. cit.*, paras. 69 and 70.