



HOUSING AND LAND RIGHTS NETWORK

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 evictions result from a range of causes, 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.

In the absence of comprehensive human rights-based laws and policies on housing and rehabilitation, the need for the adoption of human rights standards is all the more urgent. We rely on such international norms in order to fill local legal and/or policy gaps, beginning with the international recognition of “forced eviction as a gross violations of human rights, in particular the right to adequate housing,”¹ through the acclamation of legally-defined reparations for victims of such gross violations.²

The *Basic Principles and Guidelines on Development-based Evictions and Displacement* that were presented in the report of the UN Special Rapporteur on adequate housing in 2007 (hereafter *UN Guidelines*),³ are an 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.⁴ In the event that evictions must take place for bona fide public-interest reasons such as health and security, 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.

The Principles and Purposes of This Tool

The principal duty for preventing and remedying forced evictions lies with the state, including all of its constituent parts. That obligation applies equally to central government bodies, as well as regional and

¹ 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.

² “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.

³ The UN Guidelines A/HRC/4/18, 5 February 2007, at: http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf.

⁴ 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.

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 the **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.

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.⁵

Any eviction or displacement process that does not meet these minimum conditions is prohibited as a gross violation of human rights, in particular the human right to adequate housing, and 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 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 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

⁵ CESCR, General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, paras. 15–16, contained in document E/1998/22, annex IV, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en.

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 non-material 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* present the need for such an assessment to be conducted, they do not specify the components or indicators of such a tool. The efforts recounted here seek to meet the challenge of providing methods that meet the specificity required to fulfil the corresponding human rights duties.

Given the potential usefulness of this tool as a means to help assess and minimize and deter forced evictions, while also realizing justice for their victims, Habitat International Coalition’s Housing and Land Rights Network (HLRN) has developed the range of criteria and modalities of eviction impact assessment as an operational tool.⁶

Evolution of the EvIA Tool

HLRN’s ‘Eviction Impact Assessment (EvIA) Tool’ 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),⁷ 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 promises 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

² The preliminary workshop to discuss the EvIA 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.

⁷ *Housing and Land Rights Toolkit* (2006), at: <http://www.hlrn.org/toolkit/>.

the repeated commitment to “prevent and remedy forced eviction,”⁸ considering also the particular impact of that gross violation on women.⁹

However, as early as 1998, it became apparent that the senior management of UN Habitat, the designated UN agency responsible for coordinated implementation of the Habitat Agenda, lacked the will and capacity to fulfil that designated role and/or to report accordingly, HIC’s Housing and Land Rights Network assumed 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 EvIA Tool converged and found consistency with the *UN Guidelines*, pursuing further the guidance to capture the damages/costs/losses arising at any and/or all stages of the eviction/displacement process: pre-eviction, during eviction, and post-eviction. The HLRN EvIA Tool enlists components to be factored into the calculation of both material and non-material losses and also leads the user through the steps to be followed in the process. As a largely preventive mechanism, 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 versatile in its 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.

Throughout the cases described here in which the EvIA Tool has been applied, as well as future iterations, HLRN has committed to promote the use of the tool 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 EvIA 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 EvIA Tool adapts the quantification method in order to:

1. Identify the costs and losses prior to, during and after forced eviction and displacement;
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 forced evictions and displacement deepen poverty and deprivation at all stages;
4. Deter future evictions and displacement 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);

⁸ 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.

⁹ *Ibid.*, para. 61b.

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 EvIA Tool is firmly and explicitly rooted in a normative, human rights framework, with primary emphasis on the human right to adequate housing and related human rights, its ultimate purpose is to return the legal achievements of establishing this framework to the people, the subjects and bearers of human rights. This seeks to clarify the related specific entitlements and obligations, providing the greatest possible specificity to the right of victims to remedy,¹⁰ restitution, reparation¹¹ 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 EvIA Tool could be used as a practical tool by social movements, campaign groups, civil society organizations, social activists, and UN agencies working to prevent evictions. It could also be used as a resistance tool and help individuals and communities in negotiating with governments and private companies to prevent evictions, and to demand just rehabilitation and 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. As stated in the *UN Guidelines*:

69. 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.
70. 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.

HLRN hopes that this Tool will help strengthen the realisation of the human right to adequate housing across the world by preventing forced evictions, and where they have occurred, by helping to provide 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.

¹⁰ See paragraphs 60-63 of the *UN Guidelines*.

¹¹ See paragraphs 64-67 of the *UN Guidelines*.