Eviction of Charan Khad settlement
Dharamshala

FACT FINDING REPORT

WSS and Delhi Support Group

Annexures
# Annexures Index

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Annexure 1. List of informants

A. Members of affected community
**B. Government officials**

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<th>So.no</th>
<th>Name of government official</th>
<th>Designation</th>
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<tr>
<td>1</td>
<td>Kumari Rajni Devi</td>
<td>Mayor of Dharamshala</td>
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<tr>
<td>2</td>
<td>Ritesh Chauhan</td>
<td>District Collector</td>
</tr>
<tr>
<td>3</td>
<td>Rahul Dubey</td>
<td>Executive Engineer</td>
</tr>
<tr>
<td>4</td>
<td>Sanjeev Saini</td>
<td>Municipal Engineer</td>
</tr>
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**C. Civil Society representatives**

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<tr>
<th>So.no</th>
<th>Name of Civil Society Member</th>
<th>Organization</th>
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<tr>
<td>1</td>
<td>Manshi Asher</td>
<td>Himdhara Collective</td>
</tr>
<tr>
<td>2</td>
<td>Akshay Jasrotia</td>
<td>Kisan Sabha Baijnath</td>
</tr>
<tr>
<td>3</td>
<td>Sukhdev Vishwapremi</td>
<td>People's Campaign for Socio-economic Equality</td>
</tr>
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<td>4</td>
<td>Aatrey Sen</td>
<td>Forum for Human Rights</td>
</tr>
<tr>
<td>5</td>
<td>Pawan Purohit</td>
<td>Concerned citizen, Dharamsala</td>
</tr>
<tr>
<td>6</td>
<td>Prabhu Singh</td>
<td>Concerned citizen, Dharamsala</td>
</tr>
<tr>
<td>7</td>
<td>Shyam Krishnan</td>
<td>Concerned citizen, Dharamsala</td>
</tr>
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De-notified communities comprise of those social groups who were branded as ‘criminal tribes’ with the enactment of Criminal Tribes Act (CTA) by the British government in India in 1871 and then “de-notified” by the Indian government in 1952 with the repeal of the CTA. The 1871 CTA and its later amendments notified more than 120 communities as “Criminal Tribes”. Act also stigmatized, as these communities were criminal by birth and practiced crime as a profession. The Act gave the colonial government the power to brand, penalizes, and segregates and forcibly did inactive to the nomadic communities.

British Government aim was to control these vast populations, which were nomadic in nature. These communities were threat to British Empire. In the name of maintaining law and order, British government used this act as effective weapon against these rich cultured communities, used them as cheap wage labour and slaves. Due to colonial encroachment these communities become socially-economically-politically and culturally vulnerable.

After the repeal of the CTA in independent India, NT-DNT communities are still socially, economically politically and culturally in vulnerable condition. NT-DNT communities remained in fear of state previously British Government and now current Indian Government. They used to migrate from one place to another in search of livelihood and are still doing the same today. These communities have been deprived of education, employment, health facilities and social welfare schemes of government. Due to rapid industrialization and modernization their traditional skills have been outdated.

In 1952, “Criminal Tribe Act” was repealed with “Habitual Offenders Act”. Though the act was repealed the stigma of criminality attached with them, till today. NT/DNT communities are victimized by police officers without involvement in any kind of criminal activity. It is common thing for police agencies to arrest these community people for any theft or crime, which takes place in the surrounding and in many cases it has been reported that they have been subjected torture as well. Most of the people in mainstream society still perceive them as criminals and assumed to be unwanted part of the society.

The illiteracy among DNT and NT is rampant. The communities are criminalized; families are deprived of their traditional sources of livelihood which directly impacts the child socialization process. It becomes difficult for families to sustain themselves and hence the children have to also work. The children are mostly involved into begging, rag-picking, vend traditional craft items on the streets, and child labour too. Literacy level of girls is very low education and early marriage is very common phenomenon. Studies also suggest that girl dropout after their first menstruation cycle. Most of the students drop out early from school as teaching is not done in their dialect the children from these communities find it difficult to understand the subject in school. Also due to unfriendly environment at home and in the community, children do not take interest in education. Further, since most of the children are first generation learners they do not have anyone to guide them in their study at home.
A brief history of the Sansi tribe

Sansis were a gypsy and nomadic caste who were Khanabadosh\(^1\) from centre of Punjab, as the Aheris are of its south-eastern portions. Sansis were also referred as Saunsis, Sainsis, Sahnsis, Sahsis, Sansiyas, Bhatus or Bhantus, but ‘Sansi’ is the mostly used name for them.\(^2\) The Sansis derive their name from Rajput ancestor named Sansis who was also known as Sansmal. Sansis had two sons whose names were ‘Mahla’ and ‘Beehdoo’. Beehdoo had 12 sons and Mahla had 11 sons. These 23 sons led to formation of 23 gotras.\(^3\) Many authors have various opinions about Sansis and their origin like some say that Sansi is another form of word Sahsi which mean brave. Dr. Bhargawa in his book ‘The Criminal Tribes’ writes that Sansi word is derived from Sanskrit word Svasa meaning breath. W.H. Sleeman in his report on ‘Budhuk alias Bagree Decoits’ says that Sansmal and Sansi were brothers.

Historically, they are really Bhatti Rajputs who were driven out of Rajasthan by Muslim invaders under Allauddin Khilji around 1303. After this defeat they had taken up nomadic way of life after defeat. It is interesting to note that some socio-anthropologists, who have studied Sansis gypsies closely, have found them to be remarkably akin to the gypsies found in Europe in terms of linguistics, cultural habits and genetics. Their social status, however, vastly declined in a matter of few centuries, owing to nomadic lifestyle. There is also a possibility that this group later assimilated with other gypsy groups of uncertain origin which would have almost certainly brought a loss of Rajput status. Over a period of time the group emerges to form a new caste group identical to gypsies and nomads. Their main profession, it is said, had been reduced to hunting, robbery and petty theft. In course of time, some of them settled down on land, acquired status and influence, and even reared kingdom by getting absorbed into local communities, adopting indigenous caste names and ultimately embracing the Sikh religion. Maharaja Ranjit Singh is taken as a descendent of one such noble family.

During the British regime, these peoples had been made to live on unsettled life, moving from place to place, in their attempt some how to fend for themselves and permitted to camp for a while on the outskirts of village strictly on sufferance, they have since time immemorial lived as outsiders in their own country. There is no patch of land for them to stand on which they can call their own land and they have no permanent habitation providing a roof over their heads, indeed they have been deprived the very basic needs which have to be satisfied for ensuing human survival.

The Sansi Tribe constitutes the most deprived as well as the most neglected section of the Indian People condemned by the social traditions to a nomadic mode of living and subsisting on the fringe of the settled community. After the independence of India in 1947, however, they were officially denotified from this list and attempts were made by the government to rehabilitate them socially. National Commission for Denotified, Nomadic & Semi-Nomadic Tribes has been set up in the year 2005. Though, the commission has been there since 2005 but still there is no information about the community uploaded on their website. This goes to show the non functioning of the commission. Various commission have been setup since independence but still there has been not much changes made to the life of communities belonging to Denotified, Nomadic & Semi-Nomadic Tribes catogor

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\(^1\) Khanabadosh: literally someone who keeps on roaming here and there searching for food.

\(^2\) “Sher Singh Sher” The Sansis of Punjab, p.1 Delhi, 1945

\(^3\) Gotra is the lineage or clan assigned to a Hindu at birth. In most cases, the system is patrilineal and the gotra assigned is that of the person’s father. Other terms for it are vamsh, vamshaj, bedagu, purvak, purvajan, and pitru.
Annexure 3

Plea filled in Court

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1800 of 2016
Date of decision: 28.06.2016

Karan Kumar & another
Versus
State of H.P. & others

Petitioners
Respondents

Coram:
The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice
The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge

Whether approved for reporting?1

For the petitioners:
Mr. Adarsh Vashista, Advocate.

For the respondents:
Mr. Shrawan Dogra, Advocate
General with Mr. Anup Rattan, Mr. Ramesh Verma, Additional
Advocate Generals and Mr. Kush Sharma, Deputy Advocate General,
for respondents No. 1 to 3.

Mr. Ranjan Sharma, Advocate, for respondent No. 4.

Mansoor Ahmad Mir, Chief Justice (Oral)

It is stated that the eviction orders have been
implemented, in letter and spirit, rendering the writ petition
infructuous.

2. At this stage, learned Counsel for the
petitioners stated at the Bar that though, some of the
similarly situated persons have got alternate place(s), but

1 Whether the reporters of Local Papers may be allowed to see the judgment?
around 500 persons are wandering and trying to get appropriate accommodation(s) nearby, but the respondents are interfering.

3. Keeping in view the fact that the petitioners stand evicted, the writ petition has become infructuous. Dismissed as such. However, the petitioners are at liberty to approach the competent authority for the redressal of their grievances.

(Mansoor Ahmad Mir)
Chief Justice.

June 28, 2016

(Tariq Singh Chauhan)
Judge.
Chronology of Events

1. On 21/9/2015 Municipal Corporation of Dharamsala was established.

2. In ending of 2015 jaundice outbreak happened for which official data shows 10 people have died and 1,600 developed jaundice, but unofficial estimates put the number higher at over 10,000 causing a dozen deaths in Shimla, the Himachal Pradesh High Court in early of 2016 had ordered the government to pay an interim compensation of Rs 2 lakh to the families of the victims and warned of stern action against three top officials two Irrigation & Public Health Department (IPH) engineers and member secretary of the Pollution Control Board for filing incorrect reports.

3. On 8/02/2016 meeting was held at District Collector’s office. Discussion on following issues was done:
   - Charan Khad slums have population of 1500 people by whom this area is being used for open defecation which could easily become budding ground any epidemic in near future.
   - Removal of these slums is also planned in order to control any epidemic in near future.
   - Irrigation & Public Health Department has highlighted that there has been complaint about damages to sewerage pipe line resulting in pollution of drinking water supply to Charan Khad area increasing the higher chances of jaundice epidemic. Therefore they have recommended removal of these slums.

4. On 18/02/2016 letter no. 32605-B by Irrigation & Public Health Department (IPH) said that above discussion happened in the meeting.

5. On 29/4/2016 letter no. 1796-1800 was send by Irrigation and Public health department to S.D.M stating the leakage of sewage pipelines and a similar complaint was also made to officer-in charge Police Station of Dharamsala. In this letter the slum population has been accused of doing damage to sewage pipe lines and also of openly defecating in Chran Khad area. This threatens drinking water supply and increases higher chances of epidemics. A proper action against these complaints has been demanded.

6. In the month March and April land was shown to people living in Charan Khad area. Relocation of settlement was proposed by administration without any official involvement or help from their side. No official communication was done from the side of administration either to the community involved or the panchayat having jurisdiction over the land. During the inspection by slum dwellers they were abused and asked to leave by the villagers.

7. On 06/05/2016 letter no. 1248-49 written by S.D.M vindicated complaints of open defecation and damage sewage pipe lines in Charan Khad area by the population of nearby slums. Resulting in pollution of drinking water supply to Charan Khad area and increasing the higher chances of jaundice epidemic. S.D.M Dharamsala also recommended removal of these slums.

8. M.C.D in their notice dated 16/5/2016 stated that they are convinced with the evidence produced by Irrigation & Public Health and S.D.M claiming that nearby Charan Khad slum is health of people living there as well as hygiene of surrounding is really poor. M.C.D also states that this has led to grave danger to health and security of people living there as well as people living near downstream. Therefore, by the article 278 and 369 of Himachal Pradesh
Municipal Corporation Act 1994 asked people living in Charan Khad slum should evacuate them in 10 days.

- Petition was filed by Karan Kumar and another against State of Himachal Pradesh and others case no. CWP No. 1378 of 2016 questioned notice on 16.05.2016 that the Charan Khad slum have been called upon to remove their huts in 10 days but on 25/05/2016 petition was disposed with direction to the DC, Dharamsala to take ‘appropriate action’ within 8 weeks.

- Second notice of eviction was issued on 3/06/2016 by M.C.D with one-week eviction notice to Charan Khad slums.

- Second petition was filed for stay on eviction with case no. 1500 of CWP/ 2016.

- On 17/06/2016 eviction drive was started ending on 21/06/2016 with infants, toddlers, children, disabled people, aged and women – some of who were pregnant and sick were thrown on the roads while it was raining. The housing materials were burned.

- On 20/6/2016 Himdrha Collective and Lokraj Neeti Abhiyan visited the demolition site. They went with the intention of documenting the entire eviction. They also met the Mayor of Dharamsala to discuss how eviction had not followed due process, procedure under the law and no effort was done to put in place a rehabilitation plan by M.C.D. Press note was released for the same.

- On 23/06/2016 second visit to community was made. Himdrha Collective, Lokraj Neeti Abhiyan, Kisan Sabha (Bejnath), People campaign for social economic equality came together to help people evicted from Charan Khad. It was found that evicted people were thrown in the villages outside Dharamsala, like Passu, Sarran, Gamru, Yol and Dagwar without consultation with either the community involved or the panchayat having jurisdiction over the land.

- On 24/06/2016 meeting with different community panchayat leaders for negotiating space for the people who were evicted. People from different organization with community members met with Joint Collector but he refused to take any responsibility of the eviction on the ground that they are encroachers and they practice open defecating which is danger to health and security of them as well as people living near downstream . Letters was drafted and send to various organizations throughout India asking for help.

- On 25/06/2016 around 200 slum-dwellers of Charan Khad marched through the town raising slogans against the municipal corporation. They sat on a dharna outside the M.C office. The people went inside to meet the officials, but nobody was sitting there. The protesters then headed to the Deputy Commissioner office and handed him a memorandum. Rally was organized by Charan Sangharsh Samiti which was formed on same day with support from Himdrha Collective and Lokraj Neeti Abhiyan, Kisan Sabha (Bejnath), People campaign for social economic equality.

- On 27/06/2016, Fact finding team from Delhi joined Charan Sangharsh Samiti. Meeting with community was held where many women interacted and discussed their issues in detail with Fact finding. Meeting with D.C was held and he suggested the community should apply for housing scheme and D.C also said that he does not have power to allot land. He very shrewdly that these people are encroacher that’s why government is not bound to allot land not eligible for rehabilitation. Meeting with community was also held where many women presented their issues in front of the fact finding team.
Annexure 5

Copy of notices issued to Community
Dharamsala evictions fact-finding report WSS and Delhi Forum

Annexures

[Text in Hindi]

12
Dharamsala evictions fact-finding report WSS and Delhi Forum
Annexures
ORDER

A notice dated 16-05-2016 was issued under section 278 of the H.P Municipal Act 1994 to the dwellers of Charan Khad area slum calling upon them to remove their hutsments within 10 days having become danger to public life and safety for the reasons recorded in detail in the said notice. The said notice was questioned by way of CWP No.1378 of 2016 titled Karan Kumar and another V/s State of H.P and others in the Hon’ble High Court on the grounds taken in the memo of writ Petition. The Hon’ble High Court, while deciding the CWP on 25-05-2016, was pleased to observe that the petitioners have filed reply (Annexure P-12) to the impugned notice dated 16.05.2016 i.e. Annexure P-11 and the respondents have not passed any order so far. The Hon’ble High Court was further pleased to order that the respondents are directed to pass order as warranted under law and accordingly the writ petition was disposed off. Pursuant to the direction of the Hon’ble High Court, Annexure P-12 i.e. the reply submitted by the petitioner Sh Karan Kumar on behalf of the community of Charan Khad slum is being taken up for consideration and passing appropriate orders.

The reply of the petitioner (Annexure P-12) which has been filed on behalf of the community of Charan Khad slum has been carefully considered and the following conclusions/findings have been arrived at on it for the reasons as recorded in detail hereinafter.
The reply basically seeks to deny identification of any jaundice cases in the community in the Charan Khad slum area during the last three months. Even if this claim as made in the reply is admitted to be true, it cannot give the petitioner reason to conclusively presume that there can be no outbreak of jaundice or water borne diseases in future given the wide spread insanitary and unhygienic conditions created by Charan Khad slum dwellers which have been duly brought to notice by Executive Engineer Irrigation and Public Health Division Dharamshala vide his letters dated 18.02.2016 and 29.04.2016 and which have also been duly corroborated by Sub Divisional Magistrate Dharamshala vide his letter dated 06.05.2016. These authorities have duly categorised the Charan Khad slum as High Risk Zone where population is habitual of open defecation. Both these authorities have concluded that this is leading to contamination of Charan Khad and polluting of water sources downstream. This scenario, according to these authorities, is replete with danger for water supply schemes downstream and the possibilities of outbreak of diseases like jaundice loom large. All this has led these authorities to arrive at the conclusion that this slum is required to be removed. Even in the meeting held on 08.02.2016 under the Chairmanship of ADC Kangra to monitor the issues related to jaundice cases in Dharamshala town, the similar fears were expressed urging the M.C authorities to devise strategy to remove Charan Khad slum permanently from this place being serious threat to Dharamshala town in respect of health issues. Even the various survey reports available with M.C
authorities reveal and incontrovertibly establish that the community living in Charan Khad slums is in the habit of defecating in open. This fact has not been denied even in the reply submitted by the petitioner. The Executive Engineer DPH has even mentioned in his letters that the persons living in Charan Khad slum are habitual of breaking main C.I. Sewerage Line and frequent complaints are being received in this regard. This is causing contamination of Charan Khad and water sources downstream. This issue has been reported to Police also.

From the scenario as brought out above, it emerges that the unhygienic conditions created by Charan Khad slum area dwellers are a potent recipe for the public health related disaster to strike and the M.C authorities cannot wait this to happen and then take curative/ remedial steps. They are expected and duty bound to engage themselves pro-actively and take preventive steps well in time in the interest of public health and safety. Hence justifiable recourse has been taken to the section 278 of H. P Municipal Corporation act 1994 for seeking the removal of Charan Khad slum dwellers. This is also a well known fact that the Hon’ble High Court in CWPIIL No. 10/2015, while taking cognizance of outbreak of jaundice in Shimla, has ordered to take action against those officers who were found delinquent in such matters and did not take necessary steps to save water supply schemes from getting polluted.

It has been stated in the reply that the community has not been able to construct toilets due to land related issues. It is incumbent upon the M.C
Authorities to provide hygienic conditions to its population and M.C. Dharamshala is discharging its duties in this direction by constructing and maintaining a large number of toilets for the use of general public. The Charan Khad slum has been raised by encroaching upon the Govt. land and rank encroachers can not expect Municipal/ Govt. authorities to extend them same facilities as a matter of right which are made available to law abiding general public. Such palliative action on the part of Municipal/Govt. authorities can further embolden unscrupulous elements and give fillip to encroachment on Govt. land. It has also been submitted in the reply that on being evicted from the land on which the slum has been raised, a well planned and coordinated rehabilitation plan be prepared for the community and they be allotted a suitable and adequate land where, they can live in future. It is a well established fact that the status of Charan Khad slum community over the land on which this slum has been raised is that of an encroacher without having any legal and bonafide rights over it. It is nowhere warranted under law that a person who is in illegal occupation of Govt. land needs to be compensated and resettled. On the contrary, the Hon’ble High Court of H. P. has held many a times in its various judgements that the encroachers on Govt. land be evicted in time bound manner and the cost of eviction be also realised from them. A drive to evict the encroachers from the Govt. land is taking place throughout the State under the strict supervision of Hon’ble High Court and laxity on the part of any Deptt is being viewed seriously by the Hon’ble Court.
Annexure 6
International Law - Rights Against Forced Eviction

The United Nations Declaration of Human Rights, agreed upon by the General Assembly on 10 December 1948, makes clear, and direct, reference to housing as a fundamental human right. Article 25(1) states that:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care, and necessary social services”

Further, Article 11 of the International Covenant of Economic, Social and Cultural Rights 1966 further expounds on Article 25(1) of the Universal Declaration of Human Rights, entrenching the right to housing by expressing that:

“The 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.”

In 1987, the International Year of Shelter for the Homeless, The United Nations also stressed the right of all individuals to:

“a real home … one which provides protection from the elements; has access to safe water and sanitation; provides for secure tenure and personal safety; and within easy reach of centres for employment, education, and health care; and is at a cost which people and society can afford.”

The scope of the right to adequate housing:

The scope of the right to adequate housing, guaranteed by Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, was defined by the Committee on Economic Social and Cultural Rights (CESCR) in its General Comment 4.

In order for housing to be adequate, it must, at a minimum, include the following seven core elements:
1. Legal security of tenure
2. Availability of services
3. Affordability
4. Accessibility
5. Habitability
6. Location
7. Cultural adequacy.

These elements of “adequacy” have further been expanded by civil society organizations as well as the UN Special Rapporteur on adequate housing, to include: physical security; participation and information; access to land, water and other natural resources; freedom from dispossession, damage and destruction; resettlement, restitution, compensation, non-refoulement and
Forced Evictions Violate the Human Rights to Adequate Housing and Land

General Comment 7 adopted in 1997 by CESCR defines forced eviction as the,

“Permanent or temporary removal against the will of individuals, families or communities from their homes or land, which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”

General Comment 7 of CESCR also encourages State Parties to ensure that

“legislative and other measures are adequate to prevent, and if appropriate punish, forced evictions carried out without appropriate safeguards by private persons or bodies.”

An overview of UN Basic Principles and Guidelines on Development-based Evictions and Displacement

I. General Obligations (paragraphs 11 - 36)

A. Duty-bearers and nature of obligations (paragraphs 11 - 12)

While a variety of distinct actors may carry out, sanction, demand, propose, initiate, condone or acquiesce to forced evictions, States bear the principal obligation for applying human rights and humanitarian norms, in order to ensure respect for the rights enshrined in binding treaties and general principles of international public law, as reflected in the present guidelines. This does not, however, absolve other parties, including project managers and personnel, international financial and other institutions or organizations, transnational and other corporations, and individual parties, including private landlords and landowners, of all responsibility.

B. Basic human rights principles (paragraphs 13 – 20)

According to international law, States must ensure that protection against forced evictions, and of the human right to adequate housing and secure tenure, are guaranteed without discrimination of any kind on the basis of race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or other status. States must ensure the equal right of women and men to protection from forced evictions and the equal enjoyment of the human right to adequate housing and security of tenure, as reflected in the present guidelines.

C. States shall ensure that evictions only occur in exceptional circumstances.

Evictions require full justification given their adverse impact on a wide range of internationally recognized human rights. Any eviction must be:(a) authorized by law;(b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under
D. Preventive strategies, policies and programmes (paragraphs 28-36)

States should adopt, to the maximum of their available resources, appropriate strategies, policies and programmes to ensure effective protection of individuals, groups and communities against forced eviction and its consequences. States should carry out comprehensive reviews of relevant strategies, policies and programmes, with a view to ensuring their compatibility with international human rights norms. States should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate. 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” assessments should also include exploration of alternatives and strategies for minimizing harm. Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly and marginalized sectors of society.

II. Prior to Evictions (paragraphs 37 - 44)

Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements:

(a) Appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives;

(b) Effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups;

(c) A reasonable time period for public review of, comment on, and/or objection to the proposed plan;

(d) Opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and

(e) Holding of public hearing(s) that provide affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities. States should explore fully all-possible alternatives to evictions.

All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. All resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites must be consistent with the present guidelines and internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling.
III. States Obligations During Evictions (paragraphs 45 – 51)

The procedural requirements for ensuring respect for human rights standards include the mandatory presence of governmental officials or the representatives on site during evictions. Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected. Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections or during or just prior to school examinations. States and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence.

IV. States Obligations After an Eviction: Immediate Relief and Relocation (paragraphs 52-58)

The Government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in cases of force majeure. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to:

- Essential food, potable drinking water and sanitation;
- Basic shelter and housing;
- Appropriate clothing;
- Essential medical services;
- Livelihood sources;
- Fodder for livestock and access to common property resources previously depended upon; and
- Education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.

Special attention should be paid to:

- The health needs of women and children, including access to female health-care providers where necessary, and to services such as reproductive health care and appropriate counseling for victims of sexual and other abuses;
- Ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation; and
- The prevention of contagious and infectious diseases, including HIV/AIDS, at relocation sites.

Identified relocation sites must fulfill the criteria for adequate housing according to international human rights law.

These include:

- Security of tenure;
- Services, materials, facilities and infrastructure such as potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means
of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate;
(c) Affordable housing;
(d) Habitable housing providing inhabitants with adequate space, protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors, and ensuring physical safety of occupants;
(e) Accessibility for disadvantaged groups;
(f) Access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas and
(g) Culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence, and access to remedies for any violations suffered.

Remedies for Forced Evictions (paragraphs 59-68)

All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

A. Compensation (paragraphs 60 – 63)

Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better. Women and men must be co-beneficiaries of all compensation packages.

B. Restitution and return (paragraphs 64 - 67)

When return is possible or adequate resettlement in conformity with these guidelines is not provided, the competent authorities should establish conditions and provide the means, including financial, for voluntary return in safety and security, and with dignity to homes or places of habitual residence. When return to one's place of residence and recovery of property and possessions is not possible, competent authorities must provide victims of forced evictions, or assist them in obtaining, appropriate compensation or other forms of just reparation.

C. Resettlement and rehabilitation (paragraph 68)

While all parties must give priority to the right of return, certain circumstances (including for the promotion of general welfare, or where the safety, health or enjoyment of human rights so demands) may necessitate the resettlement of particular persons, groups and communities due to development-based forced evictions. Such resettlement must occur in a just and equitable manner and in full accordance with international human rights law.
VII. Monitoring, Evaluation and Follow-Up (paragraphs 69-70)

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.

VIII. Role of the International Community, including International Organizations (paragraphs 71 -74)

The international community bears an obligation to promote, protect and fulfil the human right to housing, land and property. International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition on forced evictions under international human rights law and related standards. Transnational corporations and other business enterprises must respect the human right to adequate housing, including the prohibition on forced evictions within their respective spheres of activity and influence.

References:

To
The Chairperson
The National Human Rights Commission
New Delhi

Subject: Objections related to the demolition of slum and eviction of settlers at Charan Khad, Dharamsala

Honorable Sir,

It is with great concern that we, as concerned citizens and human rights supporters as well as members of the community that was settled in Charan Khand are writing to you to take immediate action in the matter of the eviction of more than 800 residents at Charan Khad slum settlement on 16 and 17th June. We are aware that the petition was filed in this regard with the commission Diary Number 78568/CR/2016, Karan Kumar and Others. The same was disposed of with directions to the DC, Dharamsala to take ‘appropriate action’ within 8 weeks.

We understand that the Dharamsala corporation authorities and administration carried out the demolition drive in Charan Khad on 16 and 17th June 2016. We would like to bring to your notice the following procedural lapses and problems in the actions of the MCD and the District Authorities

1. Inhuman treatment of tenants of Charan Khad and Eviction as a Human Right Violation

The tenants of Charan Khad were not only given a one week notice for the final eviction but the manner in which the eviction was carried out was inhuman to say the least. Police was brought in to Charan Khad and the demolition was initiated even as the occupants were dialoguing with the administration. On 16th and 17th June 2016 the occupants were peacefully protesting demanding for just rehabilitation and resettlement when the police brought in bulldozers forcefully and demolished the homes of about 290 families.
Infants, toddlers, children, disabled people, the aged, and women – some of who were pregnant and sick were thrown on the roads while it was raining. The housing material was burnt and much of the belongings just chucked on the streets. After this the people were stuffed into trucks and tempos and thrown across forests, riversides and villages in the Kangra Valley. They were separated and scattered. They were thrown in the villages outside Dharamsala, like Passu, Saran, Ganaru, Yol and Dagwar without any consultation with the Panchayats who are now shooting away the occupants because they fear that their areas will be encroached upon. In such a situation, the displaced tenants are now in the most hopeless conditions.

These are daily wage labourers and poor people with a hand to mouth existence and they have nowhere to go. This is a violation of Article 21 of constitution of the Right to Life, Right to Shelter and Right to Dignity.

The decisions of the Hon’ble Supreme Court of India in Chameli Singh vs. State of UP [1996 (2) SCC 549] and in Shantistar Builders vs. N.K. Toitane, [1990 (1) SCC 320] and numerous other judgments have laid down that the right to life is not a right to mere animal existence and that the right to housing is a fundamental right. Going further, in Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan, [1997 (11) SCC 123], the Supreme Court held that even poverty stricken persons on public lands have a fundamental right to housing. The Court laid down that when slum dwellers have been at a place for some time, it is the duty of the government to make schemes for housing the jhuggi dwellers. In the most recent decision of the Chief Justice’s Bench in the Delhi High Court in Sudama Singh Vs. Government of Delhi [168 (2010) DLT 218], the Court referred to the provisions of the Delhi Master Plan and emphasized in-situ rehabilitation. It is only in the extra ordinary situation, when in-situ rehabilitation is not possible, then only, rehabilitation by relocation is to be done. The normal rule is in-situ up-gradation and re-development.

The fact that most of the displaced belong to the Scheduled Caste and Tribes also makes this a violation of the 'Prevention of Atrocities on the 'Scheduled Castes and Tribes' Act. The occupants belong to two main castes. Most of the families are from the Sansi tribe
belonging to Rajasthan and there are about 45 to 50 families from Maharashtra belonging to the Mangarodi tribe. While the latter are from the Scheduled Castes, it seems that the former belong to a Scheduled tribe, nomadic in nature. Both the communities were homeless and have migrated in the 80s from their respective regions and made their settlement at Charan Khad. Some of the residents have ration cards and the others have voter i cards to prove the period of their residence in the area.

It is important to recognise that the children of almost all the families now go to schools, enrolled in both public and private schools in Dharamsala city. With support from some social organisations some of children have also been able to pursue higher education like medicin, BBA etc. Just as the present generation of these settlers was showing signs and hope for a better future for the community, the Municipal Corporation of Dharamsala carried out the dastardly act of taking away their shelter that too in the middle of their examination time. Many of the children were not able to write their exam papers.

Link to the video after demolition: https://www.youtube.com/watch?v=rAAYreNWPbQ

(Annexure 1: Photographs of the eviction and post demolition)

2. Absence of adequate ground for slum demolition:

It must be noted that the Joint Commissioner of the Dharamsala Municipal Corporation initiated the proceeding with a notice dated 16-05-2016 (Annexure 2 Copy of Order). In this order the Joint Commissioner cited 'open defecation' in the Charan Khad Slum referring to a District level meeting dated 08.02.2016 where the matter was discussed and a reference was made towards removal of the said slum area. The same was done based on the understanding that there was a threat of jaundice epidemic spreading in the area as a result of open defecation. The notice states that 'The Irrigation and Public Health' department through its letter dated 29th April, had raised this issue along with the issue of leakage of the sewerage pipe. It was alleged that the leakage was taking place due to the tenants at Charan Khad damaging the pipe. The same was alleged by the SDM. In this regard we would like to raise the following questions:
3. Due process and procedure under law not followed

With regard to the law and due process of eviction we would like to raise the following issues:

The final notice for the eviction was issued on 3rd June 2016 (Annexure 3 – Copy of Order), about 2 weeks before the actual demolition. The said order was issued following an appeal under CWP 1378 of 2016. The court had directed the respondents viz the MCD to take action “as warranted under the law”. The Joint Commissioner in the order dated 3rd June cites section 278 of the HP Municipal Corporation Act 1994 for the ‘removal of the slum’. The aforesaid section which relates to ‘Disputes’ fails to explain the grounds of the removal.

Also, Section 163 of the HP Land Revenue Act lays out the procedure for ‘eviction’. This act would be applicable for all land that is considered to be ‘government land’. The provisions of this act were also not applied in this case.

Further, the MCD as per the Section 3 of the HP Slum Improvement and Clearance Act 1979 (Annexure 4 Copy of the Act), should have been declared the Chiran Khad settlement as a ‘Slum Area’. If this was not done by the District administration for a slum that is 35 years old, then it begs the question ‘Why?’ If the same was done then the concerns of the tenants should have been heard by the administration under provisions of Chapter VI of the same act. Interestingly, in all its communications and orders, the MCD has used the phrase ‘Chiran Khad
slum’. The reference to the area as a ‘slum’ is a recognition that the area is in the category of a slum and therefore the provisions of the Act must apply:

**We therefore have reason to believe that the entire eviction proceeding is legally untenable.**

Further, even if the eviction has been justified under any ground, which must be first proved by the administration and MCD, there is absolutely no justification for the fact that the drive was carried out without providing any rehabilitation or resettlement for the residents at Charan Khad.

4. **No effort to put in place a rehabilitation plan by the MCD**

The tenants had demanded that they be provided alternate rehabilitation with facilities. They were regularly and verbally assured of the same by the DC, the Joint Commissioner and the Mayor of the MCD however no written agreement or plan was put into place. The alternate sites in village Passu, Sarran and Gamru that the ‘occupants’ were asked to shift to had no housing facility or sanitation and water supply options available. In fact, the DC and MCD did not even inform the local panchayats that the Charan Khad tenants were being shown these as alternate settlement sites.

That the villages of Gamru, Passu and Sarran are in disagreement with their common/private lands being used for resettling these people. The district administration and the Municipal Corporation made no effort to ensure that they get involved in a process of identifying and acquiring land for the purpose of rehabilitation, let alone setting up any housing facility in the area. Please note that the MCD issued a press statement for the entire MCD region stating that anyone who provided place to Charan people. As a result of this no local person is providing even rental accommodation to these people. This reveals that the MCS has or had no intention of resettling the people and is in fact trying to push them out of the state itself. *(Annexure 5: Copy of Press Note/News).* This is a serious constitutional violation and the District Administration will have to be made accountable for this.
We understand that it was and is the responsibility of the District Administration and the Municipal Corporation to ensure that there has been proper rehabilitation and resettlement arrangements for the residents before carrying out a demolition drive. That the ‘demolition’ was carried out on short notice with no rehabilitation plan in place is a violation of the constitutional rights of the residents who have inhabited Charan Khad for over 40 years.

That under the Pradhan Mantri Awas Yojna there is a provision for ‘Insitu Slum Redevelopment’ which can be carried out on slums established on central and state government land. That this scheme should have been made applicable by the Dharamsala Municipal Corporation for the Charan Khad slum.

**We would like the court and authorities to consider the following:**

That the slum colony has existed in the area for more than 35 years. These residents had been working as daily wage labourers, street vendors and rag pickers in Dharamsala city. Please note that the Harayan and Punjab High Court have recently (23rd June 2016) stayed the forceful demolition of slums on the ground that the people living in slums are also contributing to making the city beautiful. [http://www.tribuneindia.com/news/chandigarh/hc-restrains-ut-from-evicting-slam-dwellers/256221.html](http://www.tribuneindia.com/news/chandigarh/hc-restrains-ut-from-evicting-slam-dwellers/256221.html)

Additionally, the recent Supreme Court decision in Gaiinda Ram vs. Municipal Corporation of Delhi, [2010 (10) SCC 715] reiterate that hawkers have a fundamental right to hawk. *It is, therefore, clear that the poor, who come to the city for work, must reside reasonably close to their place of work. Even apart from the legal aspect, studies have shown that resettlement at faraway places invariably force the poor to return to their informal housing arrangements close to their place of work.*

That most of these residents belong to the Scheduled Caste and are very poor earning a hand to mouth existence. The very reason that they migrated to Himachal decades ago is because of the social discrimination and economic inequality they face in the regions they belong. Dharamsala offered them a refuge and they have contributed in building the roads and homes in the city and in clearing the waste and garbage. They are the veritable CityMakers.
Close to 115 children from the slum were studying at the government schools and many others in local community schools run in the slum itself which are now demolished.

That the police has exercised undue pressure on the community to move off the roads and that these people now have no place to resettle.

On 21st June the tenants were picked up from the roads and stuffed in a truck to be dropped off in various random locations in Kangra district in the rainy season. We find this the most appalling.

We appeal to you to:

- Hold the District administration responsible for immediate resettlement and rehabilitation of the residents of Charan Khad slum. The Rehabilitation should ensure availability of housing with sanitation, electricity and water. Look at options available under Pradhan Mantri Awas Yojna for the same.

- In the meanwhile the residents be allowed to construct temporary shelter in the existing area of Charan Khad or any other area identified by and acquired by or in possession of the MCD. The administration must provide food and tents or other material to ensure that they have a shelter in the meanwhile.

- The police should not be allowed to threaten and intimidate the residents and those who are approaching to help them in anyway.

- The district administration and Municipal Corporation must be taken to account for their irresponsible actions. The district administration should issue orders to panchayats on whose lands these people have settled to cooperate with and assist this community as possible.

Sincerely,

Indu Prakash Singh, Convener of National Forum for Housing Rights (NFHR) Akshay Jasrotia, Kisan Sabha Bajnath, Himachal Pradesh

Sukhdev Vishwapremi, People’s Campaign for Socio-economic Equality, Palampur, Himachal Pradesh

Manshi Asher, Himdhar Collective, Palampur, Himachal Pradesh
Annexure 8

Relevant National Laws

A) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006)

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 recognizes and gives rights over forest land to Scheduled Tribes (STs) and other traditional forest dwellers in order to ensure their livelihood and food security. The Act, in its introduction, aims to give tenurial and access rights to forest dwelling Scheduled Tribes and other traditional forest dwellers, including those who were forcefully displaced due to the state’s development-based activities. **In the case of forced evictions, STs and other traditional forest dwellers are given specific rights to claim rehabilitation and ‘land compensation’ under Sections 3 (1) (m), 4 (2), and 4 (8).** Section 3 (1) (m) of the Act provides the right to in situ (on site) rehabilitation, including alternative land in cases of illegal eviction or displacement from forest land.

**Section 4 (8)** protects the right to forest land of those who were displaced from their dwelling and cultivation without ‘land compensation’ as a result of state development interventions and where the acquired land has not been used within five years of acquisition.

**Section 4 (2)** provides that no forest rights holders shall be resettled or have their rights affected in any manner unless:
- (a) Resettlement or alternatives package has been prepared, which secures livelihood for the affected individuals;
- (b) Free informed consent of the concerned gram sabhas (village councils) has been obtained, and;
- (c) Facilities and allocation of land at the resettlement site / location are complete.


The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act came into force on 1 January 2014.

Act seeks to ensure a transparent and participatory process of land acquisition, and claims to provide just and fair compensation and adequate rehabilitation and resettlement to affected persons and families. The Act also aims to ensure that the outcome of acquisition should be that, **“Affected persons become partners in development, leading to an improvement in their post-acquisition social and economic status.”**

**Application of the Act:** The provisions of the Act will be applicable when land is acquired by the government for its own use, hold and control, including for Public Sector Undertakings and 'public purpose.'

**Section 2 (1) of the Act** provides a list of public purpose projects for which land can be acquired. This includes projects for sports and health care programmes, housing for low income groups; planned development of village sites or any site in urban areas; and provision of land for residential purposes for weaker sections, and poor or landless persons, displaced persons or persons residing in areas affected by natural calamities.
Section 2 (2) states that the Act will also apply in case land is acquired for public private partnership (PPP) projects and by private companies for public purpose. In the case of acquisition for private companies, there must be prior consent from at least 80 per cent of the affected families and for PPP projects, prior consent must be obtained from at least 70 per cent of the affected families.

Section 99 of the Act - change of the purpose or related purpose for which land is sought to be acquired is not permissible.

Section 4 of the Act : Social Impact Assessment Study- this section states that before land is acquired for a ‘public purpose,’ the Panchayat (local governing council), Municipality or Municipal Corporation must carry out a Social Impact Assessment study to assess whether the proposed acquisition serves any public purpose, and to estimate the number of affected families and extent of lands, houses and common properties likely to be affected. The study must also include whether an alternative site has been considered for land acquisition. The study must consider the impact that the land acquisition may have on the livelihood of affected families, sources of drinking water, healthcare facilities, public utilities, schools and education or training facilities, electricity supply, anganwadis (crèches), places of worship, parks, burial and cremation grounds, and land for traditional tribal institutions.

Section 8 (1), the government must ensure that the proposed acquisition is legitimate and is meant for bone-fide public purpose. The benefits of the acquisition should outweigh the social costs and adverse impacts. The government must also use land which has been previously acquired and is unutilised. Notification With regard to notifying affected communities of the proposed land acquisition,

Section 11 of the Act provides that details of the land acquisition shall be published in the official gazette and two daily newspapers circulated in the locality of the area, in the local language in the Panchayat, Municipality or Municipal Corporation of the affected areas, and uploaded on the website of the appropriate government.

Section 28 Compensation – This section of the Act provides that compensation should be determined by the market value of the land to be acquired by including all assets attached to the land. Compensation should also take into account: damages sustained due to loss of standing crops and trees; loss of property and earnings; forced change of residence or place of business; diminution of profits of the land between the time of publication of the declaration of acquisition and the time of the Collector's taking possession of the land; and, any other ground which may be in the interest of equity and justice of the affected families.

Section 31 - Rehabilitation and Resettlement

The rehabilitation and resettlement award shall include, inter alia, a rehabilitation and resettlement amount payable to the family; particulars of the land and house to be allotted to displaced families; payment of one time subsistence and transportation allowance; payment for cattle shed and petty shops; and, particulars of any fishing rights that may be involved.

The Protection of Human Rights Act provides for the creation of the National Human Rights Commission and State Human Rights Commissions in India, and also lays down their powers and functions.

The origin of these commissions can be traced to the Vienna Declaration and Programme of Action adopted in June 1993 and the creation of the United Nations Office of the High Commissioner for Human Rights in December 1993. The Act marked the Indian state’s readiness to assume responsibility for realizing human rights of all its citizens in accordance with the Vienna Declaration, where it is stated (Part I, Paragraph 1) that, “human rights and fundamental rights are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.”

In Section 2 (d) the Act provides a definition for human rights: “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

The national and state human rights commissions established by this Act have been granted the power of a civil court while trying a suit under the Code of Civil Procedure 1908. These commissions can inquire suo-moto or on the basis of petitions presented to them by a victim or any person on his / her behalf, into complaints of violation of human rights or negligence in the prevention of such violation by a public servant. Following investigation, the commissions can recommend to the concerned government or authority to pay compensation, to initiate proceedings for prosecution, and / or approach the Supreme Court of India or the High Court concerned for such directions.

D) The Slum Areas (Improvement and Clearance) Act (1956)

The Slum Areas (Improvement and Clearance) Act 1956 aims to “provide for the improvement and clearance of slum areas in certain Union Territories and for the protection of tenants in such areas from eviction.” Since the Act is a central government legislation, it is only applicable in areas under control of the centre, which are the Union Territories of India.

Several other states, such as Tamil Nadu, have enacted similar laws or extended the Act to their states. The Act contains provisions for notification and compensation in case of demolition or improvement of buildings ‘unfit for human habitation.’

Section 19 of the Act specifically pertains to the protection of tenants in notified slum areas from eviction, and provides for procedures for adequate notification and alternative accommodation.

E) The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act (2014)

The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act 2014 was promulgated as a law in February 2014 by the Indian Parliament. It provides for the creation of Town Vending Committees that are required to conduct a survey of all street vendors within their jurisdiction and ensure that identified vendors are accommodated in vending zones. It states that no street vendor shall be evicted till the survey has been completed. The Act proposes that relocation of
street vendors should be exercised as a last resort. Accordingly, a set of principles to be followed for ‘relocation’ is proposed to be provided for in the second schedule, which states that:

(i) Relocation should be avoided as far as possible, unless there is clear and urgent need for the land in question;
(ii) Affected vendors or their representatives shall be involved in planning and implementation of the rehabilitation project;
(iii) Affected vendors shall be relocated so as to improve their livelihoods and standards of living or at least to restore them, in real terms to pre-evicted levels; and,
(iv) Natural markets where street vendors have conducted business for over fifty years shall be declared as heritage markets, and the street vendors in such markets shall not be relocated.
Annexure 9

Highlights of Key Court Orders

A. Article 19 and Article 21:-

1. Fundamental Constitutional rights are at stake in forced eviction cases. In *PG Gupta v. State of Gujarat and Ors.* (1995) 2 Suppl. SCC 182, the Supreme Court reiterated in Para 11 that: “the right to residence and settlement is a fundamental right under Article 19(1)(e) and it is a facet of inseparable meaningful right to life under Article 21”

2. The Supreme Court expanded on this in *Chameli Singh v. State of U.P.* (1996) 2 SCC 549, Para 8:

“In any organized society, right to live as a human being is not ensured by meeting only the animal need of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions, which inhibit his growth. All human rights are designed to achieve this object. **Right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter.** These are basic human rights known to any civilized society.

... Shelter for a human being, therefore, is not a mere protection of his limb and life. It is however where he has opportunities to grow physically, mentally, intellectually, and spiritually. **Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air, and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation.** The right to shelter, therefore, does not mean a mere right to a roof over one’s head but right to all infrastructure necessary to enable them to live and develop as a human being. **Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. [...] Want of decent resident, therefore, frustrates the very object of the constitutional animation of right to equity, economic justice, fundamental right to residence, dignity of person and right to live itself.”

3. These rights are particularly sensitive for children. In *Shantistar Builders v. Narayan Khimalal Totame,* (1990) 1 SCC 520, the Court held in Paragraph 9 that:

“The right to life would take within its sweep the right to good, the right to clothing, the right to decent environment and a reasonable accommodation to live in. **The difference between the need of an animal and a human being for shelter has to be kept in view.** For the animal it is the bare protection of the body, for a human being it has to be a suitable accommodation, which would allow him to grow in every aspect – physical, mental, and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home.”

4. These rights are threatened when the government evicts people from their homes. As this Hon’able Court pointed out in *Sudama Singh & Ors. V Government of Delhi, WP (C) 8904/2009,*

“What very often is overlooked is that **when a family … is forcibly evicted, each member**
loses a ‘bundle’ of rights – the right to livelihood, to shelter, to health, to education, to access to civic amenities and public transport and, above all, the right to live with dignity.”

B. Constitutional provisions for Right to Shelter

1. The issue of right to shelter for the urban poor has been extensively dealt with in Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan & Ors (1997) 11 SCC 121. As mentioned above, in this case, the Supreme Court stated that

“It would, therefore, be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfillment of the constitutional objectives.”

The Court went on to state

“The right to life enshrined under Article 21 has been interpreted by this Court to include meaningful right to life and not merely animal existence as elaborated in several judgments of this Court including Hawkers’ case, Olga Tellis case and the latest Chameli Singh's case and host of other decisions which need no reiteration. Suffice it to state that right to life would include right to live with human dignity. As held earlier, right to residence is one of the minimal human rights as fundamental right. Due to want of facilities and opportunities, the right to residence and settlement is an illusion to the rural and urban poor. Articles 38, 39 and 46 mandate the state, as its economic policy, to provide socio-economic justice to minimize inequalities in income and in opportunities and status. It positively charges the State to distribute its largess to the weaker sections of the society envisaged in Article 46 to make socio-economic justice a reality, meaningful and fruitful so as to make the life worth living with dignity of person and equality of status and to constantly improve excellence.”

2. As mentioned above, the Article 11 of the ICESCR also places international obligations on the state to protect “the right of everyone to an adequate standard of living for himself and his family, including …housing, and to the continuous improvement of living conditions.”

C. Evictions leading to violation of Right to Education

1. Forced evictions typically interfere with children’s ability to prepare for and attend school. The right to education, contained in Art. 21 of the Constitution of India, is covered in detail in The Right of Children to Free and Compulsory Education Act, 2009 (RTE). Section 9 of the RTE Act places clear obligations upon local authorities to:

   “b) Ensure availability of a neighborhood school

c) Ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds.

d) Ensure and monitor admission, attendance and completion of elementary education by every child (…)”

2. The children that resided in the demolished jhuggies are severely affected by the demolition. Many have their books and papers destroyed in the process. As a result of the demolition and the resulting loss of property and housing, many fail in their school exams and their displacement sometimes takes away their right to education permanently.
D. Eviction and violation of Right to Health

Forced evictions also cause various health problems for the affected residents, particularly by interfering with the provisioning of health care to pregnant and lactating women, and children.

1. Failure to protect maternal health and ensure access to adequate medical services is in contravention with Article 12 of the Convention for the Elimination of Discrimination Against Women (CEDAW), which is binding upon India:

“State Parties shall ensure to women appropriate services in connection with pregnancy confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

2. Similarly, the health of children is particularly threatened by forced evictions, as it can disrupt their access to adequate nutrition, prevent them from receiving necessary health care visits, and put strains on the ability of their families to care for them. The vulnerability of children is protected in the Convention on the Rights of the Child (CRC). Art. 24 states:

“State Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.”

3. And, obviously, those with existing health problems or disabilities suffer greatly by being forced from their homes. Such evictions interfere with their access to required health care provisions, and being made homeless often exacerbates these health problems.

E. Eviction and violation of Right to Livelihood

Forced evictions often result in the loss of employment by the affected residents, thus violating another constituent component of the right to life. This Hon’ble Court pointed out in P.K. Khoul v. Estate Officer & Ors, W.P.(C) No.15239/2004 & CM No. 11011/2004:

“The Supreme Court has further held that such violation may also adversely impact and violate the right to occupation and profession under Article 19(1)(g) of the Constitution of India (…)”
Several national policies also recognize the need of the government to provide improved housing and shelter, and resettlement and rehabilitation in instances of eviction and displacement.

a) National Urban Housing and Habitat Policy (2007)

The stated focus of India’s National Urban Housing and Habitat Policy 2007, is the, “Provision of ‘Affordable Housing for All’ with special emphasis on vulnerable sections of society such as Scheduled Castes / Scheduled Tribes, Backward Classes, Minorities and the urban poor.” The Policy also seeks to ensure equitable supply of land, shelter and services at affordable prices. It gives preference to provision of shelter to the urban poor at their present location or near their work place, and also adopts an approach of in situ (on site) rehabilitation. The Policy claims to make special provisions to include women at all levels of decision- making for ensuring their participation in the formulation and implementation of housing policies and programmes. It also addresses the special needs of women- headed households, single women, working women, and women in difficult circumstances with regard to housing serviced by basic amenities.

b) Draft National Slum Policy (2001)

India still does not have a national slum policy. What exists is a draft that contains few provisions related to resettlement. These include:

- State / Urban Local Bodies (ULB) should explore alternatives to resettlement before a decision is taken to move people;
- Relocation distances should be minimized to reduce the impact on livelihoods;
- Resident dwellers must be provided with some choice of alternative sites, and where feasible, an alternative rehabilitation package;
- All resettlement sites should be adequately serviced and provision should be made for public transportation prior to resettlement;
- The livelihoods of affected persons must be sufficiently compensated within a fixed period;
- Participation of primary stakeholders, particularly women, in planning and decision- making is a prerequisite for any resettlement process;
- Any urban development project that leads to involuntary resettlement of communities must make provisions to cover the costs of resettlement and rehabilitation; and,
- The timing of interventions must also reduce dislocation and discomfort, especially during periods of inclement weather.

c) Rajiv Awas Yojana Announced in 2009
Rajiv Awas Yojana (RAY) is a national scheme of the Ministry of Housing and Urban Poverty Alleviation that intends to, “build a ‘slum free’ country while providing shelter and basic services to the urban poor.” The scheme is being implemented in 20 states across the country, in different ways. The Rajiv Awas Yojana Guidelines 2013-2022 list the major components and operationalization elements of the scheme. While RAY has the potential to improve housing conditions for the urban poor through in situ (on site) upgrading and the provision of legal security of tenure, it is important that state governments work to ensure that RAY does not, in any way, facilitate evictions and the takeover of public land for private profit. Communities need to be informed of any RAY projects being undertaken in their cities, and their participation should be guaranteed in them. The provisions for legal security of tenure under RAY must ensure a guarantee against forced evictions. States must not use arbitrary classifications such as ‘tenable’ and ‘untenable’ slums as a means to evict residents. The human right to adequate housing framework should be adopted by state governments for implementation of all RAY projects.