

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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INDIA: AUTHORITIES MUST RESETTLE THE FAMILIES AT RISK OF FORCED EVICTION IN GAFFUR BASTI, UTTARAKHAND

Amnesty International is gravely concerned about the imminent threat of forced eviction faced by at least 4,500 families in Gaffur Basti located in Haldwani town of Uttarakhand state in India. The disputed area is inhabited by one of the most economically and socially vulnerable communities, mostly Muslims, in Uttarakhand state. The affected people maintain that they are the rightful owners of the land on which they live and have resided in the area for over four decades. Most of them are currently litigating before various courts to establish their ownership rights. The forced eviction will affect at least 50,000 persons.

Notwithstanding the legal dispute over ownership of the land, the Indian authorities have an obligation to guarantee the right to adequate housing to all which includes protection from forced evictions and ensuring that no one is made homeless or vulnerable to other human rights violations because of an eviction. This obligation to respect, protect and fulfil this human right lies with all levels of government including local governments, and their representatives. The land in question also has mosques and temples along with government schools, hospitals, and banks. Forcing the community to leave their homes will result in loss of their livelihoods, their neighbourhoods and social networks, their access to essential services such as schools, healthcare, water, and sanitation.

On 20 December 2022, the Uttarakhand High Court in India gave the residents of Gaffur Basti seven days to vacate their homes failing which it allowed the state government to bring in paramilitary forces to forcibly evict people.¹ It further ordered the demolition of the vacated homes and other buildings in order for the land to be used by the central government, in particular the Indian Railways to expand their projects.

In 2013, petitioner Ravi Kumar Joshi alleged before the Uttarakhand High Court that a newly constructed bridge adjoining Gaffur Basti had collapsed due to the illegal mining activities carried out by the residents. The petition further claimed that the residents were living illegally on the land essentially owned by the Indian Railways. Even though the original petition merely sought regulation of the alleged illegal mining, the latest set of court directions focusses on forcibly evicting the residents from their homes while remaining silent on the original prayer of the petition. The decision in December 2022 marked the culmination of this dispute.

On 5 January 2023, the Supreme Court of India stayed the forced eviction and asked the authorities to take a more “humane” approach and prioritise the rehabilitation of the residents.² Amnesty International calls on the authorities, primarily the Indian Railways and the Haldwani district administration to be guided by international human rights standards and the Constitution of India in rehabilitating the residents of the area.

LEGAL SAFEGUARDS TO PREVENT FORCED EVICTIONS

Under the International Covenant on Economic, Social and Cultural Rights, to which India is a state party, everyone has the right to adequate housing which includes a prohibition on forced evictions.³ In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.⁴ These safeguards

¹ Uttarakhand High Court, Ravi Shankar Joshi v. State of Uttarakhand, Writ Petition (PIL) No. 30 of 2022, 20 December 2022

² Supreme Court of India, Abdul Mateen Siddiqui vs Union of India and Others, SLP(C) No. 001002 - / 2023, Registered on 10-01-2023

³ Article 11.1 of the covenant recognises ‘the right of everyone to an adequate standard of living ... including adequate food, clothing and housing’. The UN Committee on Economic, Social and Cultural Rights (CESCR) defines a forced eviction as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of and access to, appropriate forms of legal or other protection.” CESCR, General Comment No. 7: The right to adequate housing (Article 11.1) of the Covenant): forced evictions, para 3, (Sixteenth session, 20 May 1997), E/1998/22.

⁴ CESCR, General Comment 7, para 14.

include genuine consultation with the people affected; reasonable and adequate notice; provision of legal remedies for infringement of rights; and provision of legal aid to people who need it to seek redress from the courts. The Constitution of India under Article 21 guarantees the right to life and liberty to every person. The provision has been interpreted by the Supreme Court of India to include the right to live with dignity which includes access to adequate nutrition, clothing, shelter, facilities to read, write and express oneself and freedom of movement and towards that, immediate enforcement of laws and regulations prohibiting displacement and forced evictions.⁵

NOTICE

International human rights standards state that individual notices must be provided in writing, in the local language or languages whenever possible, or translations services must be made available. Written notices must be complemented by measures to provide information in an accessible format for anyone who is unable to read. This may require the use of public television and radio announcements but must not stop at that. To facilitate the practical realisation of the right to housing, the Supreme Court of India made the right to notice and hearing prior to evictions and access to existing schemes on rehabilitation after meaningful consultation with each person at the risk of an eviction, a pre-requisite.⁶

According to the UN guidelines on evictions, “If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least 90 days’ notice prior to the date of the resettlement.”⁷ For situations involving mass evictions such as in Gaffur Basti, 90 days would therefore normally be a minimum requirement.

RIGHT TO PARTICIPATION AND CONSULTATION

The right of everyone to participate in decisions that affect the exercise of their human rights is strongly grounded in international human rights law and standards. Specifically, with respect to the prohibition of forced evictions, the UN Committee on Economic, Social and Cultural Rights (CESCR) has stated: “[s]tates parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.”⁸

Resultantly, anyone affected by a proposed eviction must be given adequate time and opportunity to reflect upon, discuss, raise concerns, and submit comments about the eviction and any related plans, including on compensation and resettlement. Affected people should be able to participate collectively, through their elected representatives, if they have any, and in smaller groups and individually. They must also be given an opportunity to suggest any feasible alternatives to eviction.

In 2015, the Railway authorities with the support of the Delhi police demolished 1200 houses that were providing shelter to nearly 5000 people in Shakur Basti area of Delhi. In 2019, the Delhi High Court held that the removal of the residents of Shakur Basti was contrary to law and must not have been done unannounced. It further held that the authorities must carry out a detailed survey along with chalking out a rehabilitation plan in consultation with residents which must be immediately executed after the eviction.⁹

As a step forward, the Railway authorities must hold public meetings where they share information and provide people with the opportunity to raise questions, suggest alternatives to evictions and challenge any decisions taken by the authorities. Organizations and advocates working with the affected community must also be able to attend these meetings. The authorities must also publicize and keep records of such meetings. People must have an opportunity to view and challenge those records.

ENSURING THAT NO ONE IS LEFT HOMELESS AS A RESULT OF EVICTION

It is imperative that people at risk of an eviction are compensated for all losses and governments must provide adequate alternative housing to those who cannot provide for themselves before the date of eviction. All resettlement

⁵ Supreme Court of India, *Francis Coralie v. The Union Territory of Delhi*, (1981) 1 SCC 608; Delhi High Court, *Sudama Singh & others v. Government of Delhi & another*, WP(C) Nos.8904/2009, 7735/2007, 7317/2009

⁶ Supreme Court of India, *Olga Tellis v. Bombay Municipal Corporation*, 1985 SCC (3) 545, 10 July 1985

⁷ UN Basic Principles and Guidelines on Development-based Evictions and Displacement (Basic Principles), Annex 1 to UN.Doc, A/HRC/4/18, principle 56(j).

⁸ CESCR, General Comment 7, Article 11, para. 13.

⁹ Delhi High Court, *Ajay Maken and others v. Union of India and others*, Delhi High Court, Writ Petition (Civil) 11616/2015

measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, must comply with international human rights standards.¹⁰

The Indian courts have also held that authorities must ensure that persons evicted from their homes and lands are provided with adequate compensation and offered alternative accommodation.¹¹ While the Indian and Uttarakhand laws do not specify a procedure for the administration to follow to implement its administrative decisions, jurisprudence has established that decisions must be legitimate and in line with the Constitution and law. For instance, in 2019, the Delhi High Court held that the right to housing is a bundle of rights not limited to a bare shelter over one's head and includes the right to livelihood, right to health, right to education and right to food, including the right to clean drinking water, sewerage and transport facilities. Earlier, in 2010, it had held that the state authorities must conduct a survey determining which residents are eligible for resettlement and rehabilitation under existing policies before carrying out an eviction.¹² Notwithstanding, the Uttarakhand High Court did not lay down any procedure or provide any compensation or alternative housing options to the affected community although Uttarakhand has a specific legislation called the Uttarakhand Reforms, Regularisation, Rehabilitation, Resettlement and Prevention of Encroachment of the Slums located in Urban Local Bodies of the State Act to identify ecologically vulnerable slums as a priority while dealing with "encroachments" and resettlement.

Amnesty International calls on the authorities to give affected people adequate time to assess all possible losses and ensure that they are compensated. Moreover, any form of compensation must not be meagre and should allow the affected people to access their right to adequate housing and protect them from being forcibly evicted. In case, the household prefers cash compensation, the authorities must ensure that the preference for cash compensation is acceptable to all people within the household, especially women.¹³ Both women and men in the household must be co-beneficiaries of the cash compensation provided.¹⁴ In the case of single women and women-headed households, monetary compensation must be given to the women.¹⁵

Importantly, the authorities must ensure that they assess and address the needs of the most disadvantaged groups and ensure that the process is non-discriminatory. Moreover, the resettlement solutions offered may not suit everyone and the authorities must consider a range of compensation and resettlement options in response to different needs.

FORCED EVICTIONS AND MARGINALISED GROUPS

It is often the most marginalized groups in society who are victims of forced evictions. Draconian planning laws are frequently used to further disenfranchise and segregate these communities. According to Housing and Land Rights Network, which works for the realization of the human rights to adequate housing and land in India, at least 567 people were evicted every day in the year 2021 in India and the implementation of court orders by state authorities resulted in the eviction of over 106,014 people. At least 28 percent of those affected by forced evictions in 2021, belonged to marginalized groups, including, Scheduled Castes, Scheduled Tribes, Other Backward Classes, nomadic communities, migrant workers, and Muslims.¹⁶

Gaffur Basti is largely populated with Muslims and other economically disadvantaged communities who work as daily-wage labourers.¹⁷ Without any immediate remedy in place, the community responded to forced evictions by organising peaceful sit-ins and protest marches.¹⁸ Women, men and children were seen appealing to the authorities on national television to not remove them from the homes their families have lived in for generations. The residents of Gaffur Basti have lived in the area for over four decades, some since before India's independence and have been paying property and water tax to the government.¹⁹ Since 2013, owing to change of state government and the ongoing

¹⁰ UN Basic Principles and Guidelines on Development-based Evictions and Displacement (Basic Principles), Annex 1 to UN.Doc, A/HRC/4/18.

¹¹ In *Sudama Singh & others v. Government of Delhi & another* (WP(C) Nos.8904/2009, 7735/2007, 7317/2009 and 9246/2009, 11 February 2010), the Delhi High Court relied on the guidelines adopted by the Committee in its General Comment No. 7 on forced evictions.

¹² *Sudama Singh & others v. Government of Delhi & another*

¹³ Basic Principles, 60.

¹⁴ Basic Principles, 62.

¹⁵ Basic Principles, 62.

¹⁶ Housing and Land Rights Network, *Forced Evictions in India 2021*, https://www.hlrn.org.in/documents/Forced_Evictions_2021.pdf

¹⁷ The Wire, "Political Conspiracy to Change Demography? A Few Forgotten Facts About Haldwani's Banbhulpura", 10 January 2023, <https://thewire.in/rights/haldwani-banbhulpura-eviction-demography>

¹⁸ The Quint, "This Is Not Railway Land: Haldwani Residents Protest High Court's Eviction Order", 3 January 2023, <https://www.thequint.com/news/india/this-is-not-railway-land-haldwani-residents-protest-high-courts-eviction-order#read-more>

¹⁹ NewsClick, "Explainer: The How and Why of Proposed Evictions in Haldwani's 'Railway Land'", 4 January 2023, <https://www.newsclick.in/Explainer-The-How-Why-Proposed-Evictions-Haldwani-Railway-Land>

litigation, the estimated 50,000 residents of Gaffur Basti have lived under constant threat of forced eviction even during the peak of Covid-19 pandemic.

In 2019, in the case of residents of Shakur Basti, the Delhi High Court said that the state perception of the residents as “encroachers” is unwarranted and must be countered with opportunities for rehabilitation. It is essential that authorities find sustainable solutions for residents of Gaffur Basti who are at risk of forced eviction. State intervention must improve their situation, not worsen it. If authorities fail to find adequate housing solutions for people who have to be evicted, in addition to the harm that this may cause through loss of work, investment in homes and access to health care and education, it can force people to live in increasingly precarious situations and risk repeated evictions.

As India assumes the G20 Presidency in 2023, it must use this opportunity to affirm its commitment to human rights as a central tenet of sustainable development. It must take the most ambitious measures possible to immediately stop forced evictions that have continued to take place with impunity because the people being forcibly evicted live in poverty, are marginalised, and ignored. Hence, Amnesty International calls on the Indian government to develop national housing strategies, slum upgrading, social housing and other programmes, designed and implemented in a participatory manner, and ensuring that policies and programmes prioritise the most disadvantaged groups. No one must be made homeless or vulnerable to other human rights violations as a consequence of an eviction.