

**United Nations Human Rights Council  
Universal Periodic Review Cycle 3: India**

**27<sup>th</sup> Session**

**Joint Submission of the ICAAD, Nazdeek and PAJHRA**

**Introduction**

1. **The International Center for Advocates Against Discrimination (ICAAD)** is a nonprofit organization that combats structural discrimination and promotes human rights norms consistent with public international law. ICAAD brings together passionate multidisciplinary teams of lawyers, data scientists, universities, and design strategists to improve access to justice for women, girls, and vulnerable communities, while strengthening the capacity of civil society and government. ICAAD has special consultative status with the United Nations Economic and Social Council (ECOSOC). ICAAD was founded in 2012.  
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2. **Nazdeek** is a legal empowerment organization dedicated to bringing access to justice closer to marginalized communities in India. Our model fuses grassroots legal education, community monitoring of service delivery, use of legal remedies, and strategic advocacy to advance socio-economic rights with a focus on maternal health, nutrition, housing and labor in Delhi and Assam. Nazdeek was founded in 2012.  
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3. **PAJHRA**, in Adivasia (Sadri) language means ‘Life Spring’, stands for Promotion and Advancement of Justice, Harmony and Rights of Adivasis. PAJHRA is an initiative of Adivasis of Assam from all walks of life. Adivasis who have lived peacefully and whose contribution is substantial to the economy of Assam believe that they deserve and can have a better status in North East India and it is up to them, in collaboration with other agencies to change their lot. It follows different approaches such as promotion and capacity building of frontline organizations, networking and advocacy, small research, documentation and publicity and women empowerment. PAJHRA was founded in 2002.  
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4. This joint submission, given the areas of expertise of these organisations, presents an overview of the status of rights and violations concerning the maternal health and labor conditions of tea plantation workers in Assam, inadequate housing and poor health conditions of the urban poor, and the torture of persons held in police custody.

## Executive Summary

5. Through their collective community monitoring project, End Maternal Mortality Now – initiated to bring down the rate of maternal deaths in Assam, India – ICAAD, Nazdeek, and PAJHRA can confirm that India still faces serious problems in regard to the violation of women’s right to nondiscrimination and right to life as protected under the Indian Constitution (Articles 14, 15, & 21), and international instruments including Article 2 of the International Covenant on Economic, Social and Cultural Rights, and Article 12 and 14 of the Convention on the Elimination of Discrimination Against Women.<sup>1</sup> India still has much to do to fulfill its obligations under the multiple UPR recommendations regarding maternal and infant health that India supported during the last UPR cycle. The current condition of public health services, further elaborated in the report, underscore the need to adopt a national legislation on the right to health.
6. This submission brings to light labor rights violations of tea plantation workers in Assam, with recommendations to meet the statutory minimum wage and provide safe & healthy working and living conditions in keeping with its legal obligations. Recommendations on housing seek to address the large scale of violations taking place in the absence of a national legislation on the right to adequate housing, with India’s urban poor being victims of forced evictions and inequitable rehabilitation.
7. Furthermore, since its last UPR review, India has still not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.<sup>2</sup> The practice of torture of civilians by police in custody continues unabated, and a case filed in the United States shows that despite being a signatory to the Convention against Torture, India failed to uphold diplomatic assurances not to torture an individual who was extradited from the United States, in violation of international law. During its prior UPR, India previously supported recommendations to ratify the Convention, but has made no progress in doing so.

## MATERNAL MORTALITY

### a) Background

8. During India’s 2<sup>nd</sup> Cycle UPR review, Austria, Egypt, Norway, and Honduras recommended that India continue to take practical steps to reducing maternal and infant mortality (Recommendations 138.150, 151, 152, and 154). Despite progress achieved in reducing the

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<sup>1</sup> ISIF Asia 2015, Project Factsheet Information, *isifasia\_grants\_grants2014\_technicalreport\_nazdeek\_vfinal*, p.5.

<sup>2</sup> United Nations 2012, Human Rights Council, Working Group on the Universal Periodic Review, Thirteenth session, India, *A/HRC/WG.6/13/IND/1*, p.7, viewed 19 September 2016, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/116/85/PDF/G1211685.pdf?OpenElement>>.

rates of maternal and infant death in India,<sup>3</sup> the country continues to have one of the highest rates of maternal deaths in the world, with 45,000 women dying every year, mostly from preventable causes (WHO). Critically, the Northeastern state of Assam, home to the largest tea growing region in the world, leads the country with the highest maternal mortality ratio: 328 deaths for 100,000 live births against the national ratio of 178 (NRHM Assam, SRS 2010-12). Assam also has appalling rates of malnutrition, with between 75%-95% percent of women working in the tea gardens found to be anemic<sup>4</sup> and over half of children undernourished, according to the National Family Health Survey. These figures expose a disregard for the constitutional guarantee of health and equality as provided under the Indian Constitution and binding international human rights law, and further demonstrate non-implementation of public health programs and policies targeted at marginalized communities, including the hundreds of thousands of indigenous women tea garden workers in Assam's tea fields.

## b) State Response

9. In its position on the recommendations, India “supported” all of the recommendations related to improving maternal health, though it only “noted” Honduras’ recommendation to establish an independent organ to accelerate the efforts.

## c) Constitutional & Legislative Framework

10. In India, the right to life is protected under Article 21 of the Indian Constitution and has been interpreted to encompass various rights and protections including the right to health and food, placing clear obligations on the Central and State Governments to provide adequate access to basic services. Indeed the Supreme Court has proclaimed: “the right to life in any civilized society implies the right to food, water, shelter, education, medical care and a decent environment. These are basic human rights known to any civilized society. The civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Conventions or under the Constitution of India cannot be exercised without these basic human rights.” in *Chameli Singh v. State of UP* (1996) 2 SCC 549. The High Court of Delhi further established the rights to adequate maternal healthcare and nutrition as constitutionally protected rights in *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors, W.P.* (2010).

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<sup>3</sup> UNFPA shows 65% reduction in MMR in India between 1990-2013, p.39 *Trends in Maternal Mortality: 1990 to 2013 Estimates by WHO, UNICEF, UNFPA, The World Bank and the United Nations Population Division*

<sup>4</sup> *Incidence of anaemia among the female tea garden workers in a tea plantation in upper Assam, India*, J. Indian Med Assoc. (2012), <http://www.ncbi.nlm.nih.gov/pubmed/23029840>; see also *Small Bite, Big Threat Looms over Assam's Tea Gardens Every Year*, <http://www.newindianexpress.com/elections/news/Small-Bite-Big-Threat-Looms-over-Assams-Tea-Gardens-Every-Year/2014/04/05/article2151235.ece> (2014), *Struggle for Life: Malnutrition*: [http://nazdeek.org/exhibition/index.php/portfolio\\_page/struggle-for-life-malnutrition/](http://nazdeek.org/exhibition/index.php/portfolio_page/struggle-for-life-malnutrition/)

#### d) Remaining challenges

11. **Weak Implementation & Monitoring:** The high maternal mortality rate occurs in spite of government laws and policies guaranteeing access to universal health care and food security. Weak enforcement of health and food rights results from insufficient budget allocation, lack of awareness of rights and entitlements, discriminatory treatment based on ethnicity and socioeconomic status, and a failure to monitor resource allocation at health facilities.
12. **Inadequate Infrastructure:** Numerous schemes to improve the standard of health in urban and rural India are not accompanied by proportionate allocations to upgrade health facilities across the country. As a result, current health facilities are severely overburdened, ill-equipped, sparse and understaffed. For instance, in Sonitpur District only 21% of Primary Health Centers offer 24hrs delivery service, and there is only one blood bank in the entire district in contrast to the five allotted by Government health policies.<sup>5</sup> In many areas basic health services are unavailable, or inaccessible due to economic, geographical or social barriers. As such physical access has always been a major issue affecting the utilisation of health services, as is notable in the case of Assam.
13. **Under-utilized budgets & decreasing allocations:** Under-utilization of sanctioned funds for maternity benefit schemes such as Indira Gandhi Matritva Sahyog Yojana (IGMSY) and Janani Suraksha Yojana (JSY), coupled with budgetary slashes in social sector schemes aimed at increasing nutritional health, such as Integrated Child Development Services (ICDS) in Financial Years 2015-2016 and 2016-2017, have severely impacted the schemes performances. In the State of GNCT of Delhi for example, there has been non-utilization of maternal health funds over Financial Years 2013-2014 and 2014-2015 resulting in the delay of cash benefits to over 8,000 pregnant & lactating women in the State registered since 2014-2015, 2015-2016 and now 2016-2017.
14. **Lacking access to remedies/ Grievance Redressal Mechanisms:** Violations of the rights to health, food, life, and equality often fail to be reported and those that are reported go unaddressed or are untimely. Basic tools to document and report violations are virtually non-existent and women lack access to mechanisms to hold public and private entities accountable for the failure to provide life-saving treatment as required by law. Existing community-monitoring mechanisms envisaged under Government schemes, such as the District and Village Monitoring Committees, are dormant or ineffective, and fail to address issues at village and tea garden level. Several barriers hinder access to remedies and justice, including: low rights awareness; lack of ability to document and report violations and existing gaps in service delivery; insufficient use of administrative remedies and judicial mechanisms. While rights holders lack legal literacy of their rights and how to use existing formal remedies to claim those rights, lawyers and activists face issues enforcing those

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<sup>5</sup> *No Time to Lose: Fighting Maternal and Infant Mortality through Community Reporting*, Nazdeek, ICAAD, & Pajhra (2015), [https://issuu.com/endmmnow/docs/endmmnow\\_advocacy\\_final\\_press](https://issuu.com/endmmnow/docs/endmmnow_advocacy_final_press).

rights due to a lack of data collection and human rights documentation.<sup>6</sup>

15. The vast majority of tea garden workers belong to Adivasi (indigenous) communities, forcibly brought to work in the gardens from India's central states during the British rule. Adivasi tea workers in Assam have been facing almost two centuries of labor exploitation marked by below-poverty line wages and poor access to essential services such as healthcare and food rations. Women are at the center of this a generational cycle of poverty, and carry the highest burden of injustice. Health facilities in tea garden areas often lack equipment, medicines, supplies, staff, and referral systems necessary to ensure safe delivery and protect women's and infants' lives.<sup>7</sup> As a result, women workers are routinely denied access to adequate life-saving health services.
16. Low cost efforts like the EndMMNow ([www.endmmnow.org](http://www.endmmnow.org)) project by Nazdeek, ICAAD, and PAJHRA to educate and increase the agency of local community stakeholders are providing a window of transparency to document and track maternal health violations so that failures in service delivery, such as referrals to health centers that lack supplies or staffing, can be rectified, and in other cases legal complaints can be filed, while promoting engagement of local community stakeholder representatives directly with the local health agencies.<sup>8</sup>
17. Participants engaged in the EndMMNow project reported an improvement in the delivery of health services, staffing at clinics, access to food rations, reduced waiting times for ambulances, increased HIV testing, the elimination of pregnancy registration costs at certain facilities previously charging for these services, and in volunteers own willingness to take an active role in demanding improvement.<sup>9</sup>

#### e) Recommendations

18. Allocate resources to fulfilling commitments under prior UPR recommendations to take practical steps to reducing maternal and infant mortality.
19. Enact a national legislation on the Right to Health protecting the Right to Safe Motherhood as a justiciable right, as opposed to an entitlement or policy benefit.

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<sup>6</sup> *No Time to Lose: Fighting Maternal and Infant Mortality through Community Reporting*, Nazdeek, ICAAD, & Pajhra (2015), [https://issuu.com/endmmnow/docs/endmmnow\\_advocacy\\_final\\_press](https://issuu.com/endmmnow/docs/endmmnow_advocacy_final_press).

<sup>7</sup> *Id.*

<sup>8</sup> Using Mobile Application and Mapping Platform to Increase Accountability in Delivery of Maternal Health Services for Tea Garden Workers in Assam, Final Technical Report, Information Society Innovation Fund (ISIF)-Asia [http://isif.asia/theme/default/files/isifasia\\_grants2014\\_technicalreport\\_nazdeek\\_vfinal.pdf](http://isif.asia/theme/default/files/isifasia_grants2014_technicalreport_nazdeek_vfinal.pdf)

<sup>9</sup> *Id.*

20. Take further steps to secure women's rights under the Indian Constitution, and under international instruments including Article 2 of the International Covenant on Economic, Social and Cultural Rights, and Article 12 and 14 of the Convention on the Elimination of Discrimination Against Women.
21. Take stringent measures to ensure complete utilization of budget allocations for public health expenditure, especially maternal health schemes.
22. Focus efforts to improve public health infrastructure in semi-urban and rural areas especially to increase penetration, accessibility, quality of health services and human resource.
23. Commit to periodically assess functioning of public health facilities in areas with high maternal death rate and taking steps to improve service delivery in a time-bound manner.
24. Institute community-driven data collection efforts and entitlement-rights literacy programming, like the EndMMNow program, to monitor facilities and prompt changes in service delivery, as well as build bridges between community and government.
25. Based on our data-collection effort<sup>10</sup>, to facilitate the reduction of maternal mortality in Assam, we are highlighting particular recommendations to:
  - a. Adequately supply facilities with equipment and medicine,
  - b. Increase the number of ambulances,
  - c. Improve the availability of blood,
  - d. Ensure facilities avoid poor hygiene and overcrowding,
  - e. Ensure running water, toilets, and sanitation at facilities
  - f. Better outreach to rural areas,
  - g. Improve coordination between hospitals,
  - h. Establish an accessible and transparent grievance mechanism.

## **LABOR RIGHTS ON ASSAM TEA PLANTATIONS**

### **a) Background**

26. With more than 1.2 million permanent workers and hundreds of thousands of seasonal workers, Assam's tea industry is the largest private sector employer in India. One out of every 7 workers in India's unorganised sector is a tea plantation worker, with more than 50 percent of these workers being women<sup>11</sup>. Ongoing labor rights violations in the Assam tea industry have perpetuated a cycle of generational servitude and slavery on the tea plantations. In the 150-year history of Assam's tea industry, plantation workers have remained segregated,

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<sup>10</sup>*No Time to Lose: Fighting Maternal and Infant Mortality through Community Reporting*, Nazdeek, ICAAD, & Pajhra, p. 47-50 (2015), [https://issuu.com/endmmnow/docs/endmmnow\\_advocacy\\_final\\_press](https://issuu.com/endmmnow/docs/endmmnow_advocacy_final_press).

<sup>11</sup> Labour Rights of Tea Garden Workers, Published by Pajhra and Nazdeek.

dependent on the tea management for livelihood, health, food, housing, education and cultural life.

## **b) Constitutional and Legislative Framework**

27. The right to earn a minimum wage is protected by statutory and constitutional law. The Minimum Wages Act, 1948, the Plantation Labor Act, 1951, and Article 23 of the Constitution of India mandate that workers are paid a minimum wage and protects citizens from forced labour.
28. Under the provisions of the Minimum Wages Act, 1948, both the Central and State Governments are appropriate Governments to fix, review and revise the minimum wages of the workers employed in the scheduled employments under their respective jurisdictions. Governments have also been empowered to notify any employment in the schedule where the number of employees is 1000 or more, and fix the rates of minimum wages in respect of the employees employed therein. In this context, the State of Assam has established the minimum wage at Rs. 240 per day and has notified tea plantations under the State's list of scheduled employments.<sup>12</sup>
29. The Plantation Labor Act (PLA), 1951, is the prime national law governing tea plantations. It regulates all aspects of plantations across the country, including welfare of workers and labor standards. The PLA spells out free benefits and services that tea garden managers must provide to workers, including but not limited to housing quarters, medical facilities, crèches and educational facilities. With regards to wage, Chapter 2, Section 3 states that: '(i) "Wages" has the meaning assigned to it in clause (h) of Section 2 of the Minimum Wages Act, 1948 (11 of 1948)." However, despite fixing a minimum wage of Rs. 240/day for unskilled workers per the directives of the Minimum Wages Act, and notifying tea plantations as unskilled workers under the State's list of scheduled employments, workers are paid a mere Rs 137/day.
30. Critically, Article 23 of the Constitution of India forbids forced labour. The Supreme Court has held in *People's Union for Democratic Rights v/s. U.O.I.*, 1982 AIR (SC) 1473 that "forced labour" included workers who received wages below minimum wage for their labour even if the workers entered into, or remained in, their employment voluntarily.<sup>13</sup>
31. Among other International Labour Organisation (ILO) conventions, India has ratified the Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Equal Remuneration Convention (No. 100); Discrimination (Employment and

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<sup>12</sup> Government of India, Ministry of Labour and Employment Labour Bureau, *Report On The Working Of The Minimum Wages Act, 1948 For The Year 2012*, p. 29 dated 4 April, 2014, <http://www.paycheck.in/main/salary/minimumwages/assam>.

<sup>13</sup> See also *Sanjit Roy vs. State of Rajasthan*, 1983 AIR 328 (holding that payment of anything less than the minimum wage to workers even on the account famine or other scarcity conditions constituted 'forced labour' in violation of Article 23).

Occupation) Convention, 1958 (No. 111); Indigenous and Tribal Populations Convention, 1957 (No. 107), and Right of Association (Agriculture) Convention, 1921 (No. 11).

### c) Remaining Issues

32. **Poor Living Conditions:** Houses provided to tea workers are dilapidated at best – with holes in the roof, crumbling walls, no lighting and ventilation. Most homes lack electricity and sanitation facilities are in a state of disrepair. Garden health facilities are usually under-equipped. Primary schools on gardens have extremely under-resourced with poor infrastructure and a very weak student-teacher ratio. Such conditions prevail despite legal obligations upon the State and Management to provide essential services under PLA, 1951.
33. **Inhumane Working Conditions:** Plantation workers are required to pluck a strenuous 24 kgs of tea a day, a target set by the management, with little or no breaks. Despite 55% of the workforce on plantations consisting of women, there are no provisions of water or toilets in the gardens, forcing tea pluckers to openly defecate in the gardens. Furthermore they are not given maternity leave up until their 8<sup>th</sup> month of pregnancy. Most tea gardens lack creches. Male workers tasked with the job of spraying pesticides in the gardens without protective gear and this poses significant health hazards, with many reporting decreasing eyesight, etc.
34. **Lack of Worker Representative Unions:** The only recognized tea labour union in Assam, Assam Chah Mazdoor Sangh (ACMS), in its response to the recent draft notification urged that the minimum wage proposed by the Government be reduced. Their objection to a much-needed and campaigned for increase in the minimum wage proves that ACMS is not truly representative of workers' interests. Shockingly on the contrary, other unions supporting the increase have not been recognized as worker-representative and thus do not have the power to negotiate on their behalf. It is also worth mentioning that the same work being done by tea garden workers in Kerala fetches them a wage of Rs.500 a day, testimony to the power of adequate worker representation in unions.
35. **Discrimination:** Most of the workforce on tea plantations hail from indigenous communities. Till date, social prejudice against them prevails and they are subjected to mistreatment and abusive language across most spheres.

### d) Recommendations

36. Commit to ensuring transparency and protection of labour interests in the wage negotiation process for tea plantation workers in Assam.
37. Take strict measures to ensure tea plantation workers in Assam are paid a living wage in compliance with statutory minimum wage.
38. Impose penalties on plantations to ensure compliance with Plantations Labour Act, 1951, specifically with respect to provision of safe working and living conditions.



39. Take measures to ensure compliance with ILO conventions India has ratified in relation to tea garden workers, especially the Forced Labour Convention, 1930 (No. 29), Equal Remuneration Convention (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and Indigenous and Tribal Populations Convention, 1957 (No. 107).
40. Allocate resources to fulfilling commitments under prior UPR recommendations to promote labour policy impacting indigenous populations, including Recommendations 138.139, 138.26, and many that were noted in relation to child labour.

## **HOUSING FOR URBAN POOR**

### **a) Background**

41. According to 2011 Census, slums constitute 17.4% households (approx. 13.7 million households) in urban India<sup>14</sup>, as a result of a near 45% decadal growth rate since 2001<sup>15</sup>. Although migration for better livelihood is a trend common to all sections of society in India, forced evictions and the absence of successful affordable housing models ensure that India's urban poor remain especially vulnerable to destitution and homelessness.
42. Despite some relatively progressive jurisprudence, the right to adequate housing remains to be one of the most challenging rights to litigate on. Existing flagship housing schemes for the urban poor, while ambitious in their targets, remain to be meaningfully implemented. Instances of judicial bias against slums (often viewed as 'encroachers') still exist and wherever not, the inertia of local governing bodies in complying with progressive court directions renders long-drawn court battles futile. Issues elaborated hereunder, while in context of the State of GNCT of Delhi, are largely representative of challenges extant across country in securing adequate housing for the urban poor.

### **b) State Response**

43. In the previous UPR cycle, India "noted" all recommendations related to the Right to Housing. India has "supported" numerous recommendations directed at reducing poverty, social exclusion, inequality and the provision of more resources for the same (such as 138.75, 138.130, 138.141, 138.142, 138.134).
44. In April 2016, India invited UN Special Rapporteur on Adequate Housing on mission. The UNSR gave a very strong press statement with suggestions to the Government<sup>16</sup>.

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<sup>14</sup> Figures for 4 leading metros in India: Greater Mumbai at 41.3% slum households, Kolkata at 29.6%, Chennai at 28.5% and Delhi Municipal Corporation at 14.6%. *Source: censusindia.gov.in/2011-Documents/On\_Slums-2011Final.ppt.*

<sup>15</sup> Census of India, 2011. *Source: <http://www.censusindia.gov.in/2011-Documents/Slum-26-09-13.pdf>.*

<sup>16</sup> End-of-visit press statement, New Delhi, India, 22 April 2016, Press statement by Special Rapporteur on adequate housing, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19861&LangID=E>.

45. In line with these targets, India has introduced a number of schemes dedicated to improving housing for the urban poor over the last few years. Notable schemes include Jawaharlal Nehru National Urban Renewal Mission (JNNURM), Rajiv Awas Yojana (RAY) now replaced by Pradhan Mantri Awas Yojana, National Urban Livelihood Mission - Shelters for Urban Homeless), etc. Together, these schemes seek to provide solutions to the housing backlog, unaffordability and social exclusion in urban development. This is a welcome step. However, the overlapping nature of these schemes and an often vague budget sharing pattern between various implementing agencies have resulted in financial misappropriations and lagging progress of under these schemes.

### c) Constitutional and Legislative Framework

46. There is no legislation protecting the Right to Housing. Derived from Article 21 on Right to Life, in the past it has been guaranteed through varying interpretations of the Constitution by Supreme Court decisions.

47. Existing laws and policies vis-a-vis housing currently differ from state to state. Different models have been tried, with minimal success and their own host of issues, but so far we have not seen a model which can be successfully replicated across the country. The resulting lack of uniformity and success of laws across States makes the case for a single central legislation. Various NGO and civil society groups have been pushing for such a Bill across India.

48. The State of GNCT of Delhi is a unique case, which has both central and state land-owning agencies and municipal bodies. In addition to this, the State has a designated nodal agency for slums and their rehabilitation, Delhi Urban Shelter Improvement Board (DUSIB). In 2015, DUSIB enacted the Delhi Slum & JJ Rehabilitation and Relocation Policy, 2015 setting out the due procedure in the event of a demolition and for resettlement. However, due to lacking coordination between all government agencies involved and non-adherence to any time limit, this has not been successful. The best example is of the recent Zero Eviction policy issued by the Delhi State Government (led by Aam Aadmi Party) which was not adhered to by central land-owning agencies, and forced evictions continued in Delhi despite it.

### d) Remaining Issues

49. **Absence of Legislation:** Uniformity across different laws related to land acquisition and housing, setting the precedence of human rights, is required to ensure the Right to Adequate Housing. Currently, there is no clear line of accountability between the State & Centre as well as between local governing bodies and State agencies, blurring any attempt to access justice in case of a violation.

50. **Transparency:** Affected communities are rarely provided with accessible and accurate information in a timely manner. Meaningful engagement with communities does not take place during determination of their housing status - be it in case of in-situ upgradation, in-

situ rehabilitation or in case of resettlement. Communities have been repeatedly denied access to information about where they will be relocated, let alone consulted for the same. Repeated failure in proactive disclosure of annual plans for the development of urban slums as per schemes, policies and programmes persists in many states and cities.

51. **Time-bound Due Process:** Existing procedures for eviction and resettlement have been established only through court orders, and in some cases, through state policy. Lack of convergence between departments often results in such procedures being dishonored. Absence of any law to ensuring the process of resettlement is time-bound results in excessive delays at each step - determination of eligibility for resettlement, appeal process, resettlement and compensation.
52. **Undefined Appeal Process:** This mechanism can be described as vague at best. In the State of GNCT of Delhi, numerous families excluded from resettlement (even in the case of forced evictions) have been awaiting a decision on their housing status for months, and more often than not, for years. In destitution and desperation, affected families visit DUSIB offices each month only to be sent back as the Appeals Committee has not been constituted. There is no set timeline for its Constitution as well. Exclusion of specially vulnerable cases such as widowed women, single women, senior citizens and the handicapped are common and difficult to resolve.
53. **Substandard Resettlement:** In the few cases where resettlement has been successfully provided in GNCT of Delhi, it has been done without keeping other rights in view, most importantly the right to livelihood. Major resettlement colonies such as Bawana, Savda Ghevra, Dwarka and Baprola are located on far outskirts of the city, requiring families to travel hours to access former means of livelihood, education and essential healthcare. In many cases livelihood has taken a hit, plunging many into a vicious cycle of debt and unemployment. Simultaneously, daily out-of-pocket expenditures have increased to access essential services located at a considerable distance.

#### e) **Recommendations**

54. Adopt a national legislation on the Right to Adequate Housing, upholding in-situ upgradation as a norm for urban poor.
55. Establish due process in case of demolition of urban settlements, ensuring time-bound resettlement of affected persons and provision of basic services (such as health, food, education) at site of resettlement.
56. Institute a time-bound Appeal Protocol and Grievance Redressal mechanism to ensure speedy resettlement of affected persons and to mitigate loss of life and livelihood caused by demolition.
57. Ensure protection of the right to livelihood in the event of eviction and resettlement.

58. Ensure transparency in provision of housing to urban poor by making accessible all information pertaining to planning and development, evictions, eligibility and relocation to affected communities in a timely manner.
59. Ensure meaningful engagement with affected communities in the decision-making process vis-a-vis housing.

## **TORTURE IN POLICE CUSTODY**

### **a) Background**

60. During India's Universal Periodic Review at the United Nations Human Rights Council in May 2012, several countries including Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, and Republic of Korea recommended that India "Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment" (Recommendation 138.1), with the addition of France recommending that India adopt related internal legislation prohibiting torture and ratify the Convention "in the shortest time." (Recommendation 138.24)<sup>17</sup>
61. Since then, India has not done much to meet these recommendations. According to South Asia director at Human Rights Watch, Meenakshi Ganguly, "(t)orture is routine in India's police stations, but that practice is exacerbated in situations of conflict (...)"<sup>18</sup>
62. In two reports, "[Broken System](#)," documenting the urgent need for police reforms, and "[The Anti-Nationals](#)," on violations during India's counterterrorism operations, Human Rights Watch found evidence of widespread use of torture throughout India. Police admitted that without proper training and equipment to gather evidence, and under pressure to solve crimes, an overworked force frequently uses torture as the tool most readily available to them. Many admitted that coerced confessions and information also misled inquiries, allowing criminals to escape and innocent individuals to be arrested.<sup>19</sup>
63. The arbitrary detention and torture of civilians and minority political leaders by police, as a mechanism to retain political control and hinder freedom of speech is particularly obvious in the case of the Sikh leader Mr. Kulvir Singh Barapind, which, according to Ganguly, "(...)" gives the Indian government a high-profile reminder to take action against the chronic problem of torture in custody."<sup>20</sup>

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<sup>17</sup> Human Rights Watch 2012, *India: Punjab Case Shows Need for Anti-Torture Law*, viewed 19 September 2016, <https://www.hrw.org/news/2012/09/27/india-punjab-case-shows-need-anti-torture-law>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

64. Mr. Barapind has been the victim of torture in India multiple times in the past three decades as a result of his peaceful political activity. Mr. Barapind was first arrested in 1989. During that arrest and multiple arrests that followed, he and members of his family were subjected to torture by the Punjab Police and Indian Security Forces, prompting Mr. Barapind to flee India and seek asylum in the United States in 1993. From 1993-2006 Mr. Barapind remained in immigration detention, while pursuing his claim for asylum and vigorously opposing his extradition to India, where he faced 11 false terrorism-related charges he would later be acquitted of.
65. In 2006, the Indian government negotiated Mr. Barapind's extradition from the United States, who, due to the human rights reporting of the time, had concerns about Mr. Barapind's torture while in custody. On March 29, 2006, the Indian Ministry of External Affairs sent a diplomatic note to the United States Department of State, stating, "The Ministry of External Affairs presents its compliments to the Embassy of the United States of America in New Delhi and with reference to Note Verbale No. 6/254/POL, dated 7th March 2006 regarding Mr. Kulbir Singh Kulbeera, aka Barapind on extradition to India, will be dealt with in accordance with the law. He will be entitled to all the rights of defence, protection and remedies available and shall not be subjected to torture, as defined in the Convention against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment, 1984."<sup>21</sup>
66. Following his extradition, Mr. Barapind was tried and acquitted of all charges and freed in 2008. In 2011 he returned peacefully to the political scene, which resulted in his being arrested again in 2012, again on false charges that he would later be acquitted of in 2014. He was tortured while in police custody in 2012, suffering beatings, having his legs pulled apart to 180 degrees, having electric shocks applied to his ear lobes, and being subjected to verbal abuse.
67. In 2013, Mr. Barapind filed a civil suit in United States Federal District Court with the help of the non-profit Sikh Alliance in U.S. District Court in an attempt to seek damages and hold India liable for violating the terms of the diplomatic agreement. ICAAD and law-firm Crowell & Moring are appealing an initial dismissal of the case on grounds of foreign sovereign immunity. An expert witness statement submitted by the Indian government in the case state that, "The Government of India has signed but not ratified the Convention. As such, pursuant to the Constitution, the Government of India is not bound by the provisions set forth in the Convention."<sup>22</sup> That same expert statement claims that Mr. Barapind can effectively seek redress in India for his torture and suffering.

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<sup>21</sup> *Ambassadorial Assessment of Barapind Extradition Assurances*, <http://www.icaad.ngo/wp-content/uploads/2016/09/Diplomatic-Cable-Barapind.pdf>.

<sup>22</sup> Declaration of Professor Dr. Mahendra Pal Singh in *Barapind v. Gov. of India, et. Al.* Case No. 1:13-cv-00667-AWI-GSA (CWx) U.S. Dist. Court Eastern District, California.

68. Bijo Francis, Executive Director of the Asian Legal Resource Centre, disagrees with the Indian government's expert, stating in summary, "To conclude, torture in India is endemic, and there are no guarantees whatsoever that even if a case of torture is lodged, there would be adequate and prompt investigation in the case and that the perpetrator prosecuted, and the victim able to seek and obtain adequate redress against torture."<sup>23</sup> Other human rights attorney's statements in the case and an analysis of jurisprudence in the area shows how unlikely it is that Barapind could attain any justice in India.
69. Commenting on the Barapind case, [Meenakshi Ganguly](#) says that "Indian authorities seldom deny that torture is a problem, but their failure to ensure the safety of someone in a high-profile international case shows how extensive it is . . . [the] case spotlights the urgency for India to enact the Prevention of Torture bill and put its provisions into immediate effect."<sup>24</sup>
70. Furthermore, Human Rights Watch has also extensively documented allegations of torture in Punjab, Manipur, and Jammu and Kashmir, by both the army and police. Border residents in the Indo-Bangladesh border are also subjected to torture by the Border Security Force. In operations against Maoist insurgents, government forces, including the police and central government paramilitary, have engaged in arbitrary arrests and torture of ordinary villagers in an effort to extract information about insurgents hiding in the jungles. Security forces often use electric shock, crushing of limbs, pulling off of fingernails, severe beatings, and threats of violence against family members to punish suspects and extract information.<sup>25</sup> Torture continues despite the violation of international law and litany of scientific study showing that the practice does not work, leading to bad information and the conviction of innocents.

## b) State Response

71. "India has signed the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. A Bill introduced in the Parliament was passed in the Lok Sabha in 2010. In Rajya Sabha, it was referred to a Parliamentary Select Committee which has made certain recommendations. These are under examination by the Government. Although India has not yet ratified the Convention, Article 21 and other Articles of the Constitution of India and the relevant provisions under the Indian Penal Code, 1860, provide for adequate

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<sup>23</sup> Declaration of Bijo Francis in *Barapind v. Gov. of India, et. al.* Case No. 1:13-cv-00667-AWI-GSA (CW x) U.S. Dist. Court Eastern District, California, <http://www.icaad.ngo/wp-content/uploads/2016/09/Declaration-of-Bijo-Francis-in-Barapind.pdf>.

<sup>24</sup> Human Rights Watch 2012, *India: Punjab Case Shows Need for Anti-Torture Law*, viewed 19 September 2016, <https://www.hrw.org/news/2012/09/27/india-punjab-case-shows-need-anti-torture-law>.

<sup>25</sup> *Id.*

safeguards. The Supreme Court of India, through its judgments, has also laid down exacting standards on this issue.”<sup>26</sup>

72. In a significant legal development, in July 2015, “the Supreme Court directed state governments to install closed-circuit television cameras in all prisons within two years to prevent torture and other violations of prisoners’ rights, and to consider installing them in all police stations. Also in July 2015, the Ministry of Home Affairs stated that the government was considering amending the Penal Code to specifically recognize torture as a crime.”<sup>27</sup> No further action has been taken thus far.

### **c) Remaining challenges**

73. Torture and other ill-treatment in police and judicial custody continue to be a serious human rights problem in India. NGOs continued to report deaths from torture of prisoners while in police custody. Statistics released in August showed that 93 cases of deaths and 197 cases of rapes in police custody were reported in 2014. In August the National Human Rights Commission recorded 1,327 deaths in judicial custody between April 2014 and January 2015.<sup>28</sup>

### **d) Recommendations**

74. India should immediately move to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.
75. The Indian parliament should promptly enact the Prevention of Torture Bill and the government should take immediate steps to implement its provisions, including ending all torture and ill-treatment by security forces, and persisting with prosecutions of torturers to ensure the practice comes to an end.
76. As mass violence has exhibited itself on multiple occasions in India, where both civilian and military testimony has shown that law enforcement either stands-by or participates in violence against vulnerable communities, stopping the practice of torture is a first step in humanizing and normalizing law enforcement and its relationship with the public. Furthermore, steps should be taken to reduce corruption that continues to plague law enforcement and politics, and ruling politicians should be prosecuted where they use law enforcement as a tool to enforce democracy corrupting partisan politics.
77. Finally, ICAAD would like to highlight the Recommendation 138.69 by Hungary to, “Allow the visit of the Special Rapporteur on torture and other cruel, inhuman or degrading

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<sup>26</sup> United Nations 2012, Human Rights Council, Working Group on the Universal Periodic Review, Thirteenth session, India, *A/HRC/WG.6/13/IND/1*, p.7, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/116/85/PDF/G1211685.pdf?OpenElement>.

<sup>27</sup> Amnesty International 2016, *Amnesty International Report 2015/16*, p. 185, Amnesty International Ltd, London, UK.

<sup>28</sup> *Id.*

treatment or punishment, whose request had been pending for 18 years, in line with India's standing invitation issued in 2011 to all Special Procedures of the HRC.