



WORLD ORGANISATION AGAINST TORTURE  
P.O. BOX 21 - 1211 GENEVA 8  
SWITZERLAND  
TEL.: 0041/22 809 49 39 / FAX: 0041/22 809 49 29  
E-MAIL: OMCT@OMCT.ORG / WEB: WWW.OMCT.ORG

*Addressing the economic, social and cultural root causes of violence*

OMCT ACTION FILE (IND 150109.ESCR)  
**INDIA: ACT TO STOP THE IMMINENT FORCED EVICTION  
OF 5000 PEOPLE IN HOWRAH, WEST BENGAL**

The International Secretariat of the World Organisation Against Torture (OMCT), has received reliable information from the Banglar Manabadhikar Suraksha Mancha (MASUM), a member of the SOS Torture Network, that another forced eviction is taking place in **Howrah, West Bengal, India**. Following an order of the Kolkata High Court more than 5000 people, all from Dalit and poor communities, are about to be evicted from land that is said to be in their lawful possession near Belgachia Bhagar, the municipal garbage dumping ground of Howrah. The eviction was expected to take place on 14 January 2009, without any previous consultation with the households affected and in the absence of any resettlement plan. No prior notice was given other than an announcement by microphone two days earlier. Furthermore, OMCT has received information that a demonstration against the eviction is scheduled on 15 January at 10am and it will take place in Belgachia Bhagar. OMCT is particularly concerned that this protest will be met with violence on the part of the security forces.

OMCT is also seriously concerned that if this eviction takes place, this will involve violence and other ill-treatment against the community affected. OMCT calls upon both the *Union Government of India* and the *State Government of West Bengal* to halt immediately the current eviction procedure. In the unfortunate case that the eviction takes place, OMCT urges both authorities to ensure that the entire operation is carried out according to international standards on evictions, including freedom from violence, and to ensure also that the communities involved are granted relocation, alternative adequate housing and compensation.

OMCT recalls that this eviction is not an isolated case, but rather the latest incident related to a policy of urban development and forced eviction supported by the Government of West Bengal. In particular, Howrah administration was already involved in the 2003 forced eviction in Belilious Park. In this respect, OMCT recalls that forced evictions constitute *prima facie* a violation of “a wide range of internationally recognized human rights and can only be carried out under exceptional circumstances and in full accordance with international human rights law.”<sup>1</sup>

**Description of the events and associated episodes of forced evictions in West Bengal**

Following an eviction order issued by the Kolkata High Court, more than 5000 people living near Belgachia Bhagar - the municipal garbage dumping ground of Howrah, West Bengal - face the imminent risk of eviction from their homes and destruction of their belongings. Reportedly, the eviction was expected to take place on 14 January 2009.

<sup>1</sup> *Basic principles and guidelines on development-based evictions and displacement*, A/HRC/4/18 5 February 2007

The individuals and families involved are all from poor and marginalised sectors of society and they largely belong to the Dalit community. According to the information provided by MASUM, this community has been living in that area for more than 100 years and they claim to possess valid legal documents confirming their Indian Citizenship and residence. Furthermore, these individuals and families were reportedly unaware of the Court's decision and were neither consulted during the proceedings nor given prior notice, other than an announcement by microphone made two days earlier. In addition, neither the Court nor the State Government and Municipal administration provided any relocation plan, including redress, alternative adequate housing and compensation. According to MASUM, at least five Hindu temples and three government-aided non-formal education centres for poor and underprivileged children are also scheduled to be demolished.

Furthermore, OMCT underlines that this eviction constitutes the latest incident related to a policy of urban development that has led to a series of forced evictions supported by the Government of West Bengal. This kind of eviction has consistently targeted the poorest and most vulnerable groups who lack the political influence necessary to voice their concerns. In this regard, the Municipality carried out a massive eviction in February 2003 at Belilious Park, where approximately 7000 people were evicted to build facilities for multinational companies. On that occasion, police demolished hundreds of homes, school buildings and temples. The largest part of the evictees was again made up of Dalits and the poorest strata of society. The eviction was carried out without prior notice and resettlement plan. Reportedly, following that eviction many of the households affected were relocated to Belgachia Bhagar garbage dumping ground in Howrah where they are now facing this further eviction.<sup>2</sup> As for the Howrah case, it is reported that the Municipality is undertaking a development and beautification scheme in favour of commercial interests.

As concerns the eviction policy of the administration of West Bengal, in December 2007 OMCT issued an appeal<sup>3</sup> related to a forced and violent eviction at Armenian Ghat, Kolkata, where police officers used violence to evict 58 poor households from their homes flanking a railway. The eviction took place without warning and resettlement plan and in inclement weather. On that occasion, a number of victims, largely from Dalit and Muslims groups, and including children, women and elderly persons, were physically ill-treated and subjected to violence, and homes and belongings were destroyed.

A number of other forced evictions in West Bengal have been documented in recent years. In August 2007, Kolkata police officers pulled down and burned about 100 houses inhabited by a Muslim community along the Rajabazar Canal.<sup>4</sup> In November 2005, approximately 25,000 people were evicted from their homes in Gobindpur Railway Colony on the order of the Kolkata High Court.<sup>5</sup> On 15 February 2005, several thousand families were evicted without notice in the South 24 Paraganas District, to make way for a 21-kilometre road expansion project.<sup>6</sup> On 15 December 2003, the Government of West Bengal together with the Kolkata Municipal Corporation carried out the forced eviction of 75,000 people living in canalside settlements in the Bagbazar and Cossipore areas, without any resettlement plan.<sup>7</sup> On 22 September 2001, 20,000 residents were evicted from Tolly Nullah under an order issued by the Government of West Bengal and the Kolkata Municipal Corporation.<sup>8</sup>

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<sup>2</sup> [http://www.counterviews.org/Web\\_Doc/Reports/final\\_report\\_on\\_eviction.pdf](http://www.counterviews.org/Web_Doc/Reports/final_report_on_eviction.pdf)

<sup>3</sup> Action File IND.141207.ESCR [www.omct.org](http://www.omct.org)

<sup>4</sup> Asian Human Rights Commission: <http://www.ahrchk.net/ua/mainfile.php/2007/2543/>

<sup>5</sup> Asian Human Rights Commission: <http://www.ahrchk.net/statements/mainfile.php/2005statements/369/>

<sup>6</sup> <http://www.foodjustice.net/ha/mainfile.php/ha2005/37/?print=yes>.

<sup>7</sup> [http://www.omct.org/pdf/ESCR/OMCT%20Appeals%202003\\_ESCR.pdf](http://www.omct.org/pdf/ESCR/OMCT%20Appeals%202003_ESCR.pdf).

<sup>8</sup> [http://www.omct.org/pdf/ESCR/OMCT%20Appeals%202003\\_ESCR.pdf](http://www.omct.org/pdf/ESCR/OMCT%20Appeals%202003_ESCR.pdf).

OMCT deplors the fact that the above-mentioned forced evictions were directed at the poorest and most marginalised sectors of society, that they involved violence, ill-treatment and that they resulted in physical and psychological injury to those affected and exacerbate their already poor living conditions. Indeed, it has been commonly recognised that forced evictions intensify inequality, social conflict, segregation and “ghettoization”,<sup>9</sup> and OMCT expresses its concern that the systematic use of forced evictions by the State Government of West Bengal will continue to take place unless decisive steps are taken by the State and Union Governments to provide adequate protection to all their citizens, including those belonging to minorities and socio-economically marginalised groups.

### **The domestic legal context**

OMCT urges the Government of West Bengal to properly enforce national housing legislation, in particular the 1994 Indian National Housing Policy that provides that Central and State Governments shall “take steps to avoid forcible relocation or ‘dishousing’ of slum dwellers but rather encourage *in situ* upgrading, slum renovation and progressive housing development, and undertake selective relocation with community involvement only for clearance of priority sites in the public interest.”<sup>10</sup>

Furthermore, OMCT emphasises that the Indian Supreme Court has interpreted the right to adequate housing in the light of the right to life, as guaranteed under article 21 of the Indian Constitution. This was established under the Supreme Court’s 1985 ruling in the case of *Olga Tellis v. Bombay Municipal Corporation*,<sup>11</sup> and subsequently reiterated in the 1990 ruling in the case of *Shakti Star Builders v. Naryan Khimali Tatome*.<sup>12</sup> OMCT therefore calls on Indian national courts to uphold the Indian Constitution, Indian law and jurisprudence when dealing with eviction orders, and recalls the concerns expressed by the Special Rapporteur on Adequate Housing, about the situation of forced evictions in India:

*“If the courts in India were carrying out their deliberations and giving their judgments in accordance with constitutional obligations and India's international human rights commitments, we would not see the kind of judgments that we are seeing. [...] If you fail [to uphold the law], instead of being a protector you are becoming an accomplice in the violations that are taking place.”*<sup>13</sup>

### **International Standards**

OMCT reaffirms that forced evictions are, *prima facie*, incompatible with the principles of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and, since they involve gross violations of a range of internationally recognized human rights, are justifiable only in the

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<sup>9</sup> *Basic principles and guidelines on development-based evictions and displacement*, A/HRC/4/18 5 February 2007

<sup>10</sup> <http://www.unhcr.ch/html/menu6/2/fs25.htm#2>.

<sup>11</sup> *Olga Tellis v. Bombay Municipal Corporation* (3) SCC 545 (1985). The Supreme Court declared that “eviction of petitioners from their dwellings would result in the deprivation of their livelihood.”

<sup>12</sup> *Shakti Star Builders v. Naryan Khimali Tatome et al.* (1) SC 106, Civil Appeal No. 2598 of 1989 (JT 1990). The Supreme Court ruled that “The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in [...] For a human being [the right to shelter] has to be a suitable accommodation which would allow him to grow in every aspect—physical, mental and intellectual [...] A reasonable residence is an indispensable necessity for fulfilling the constitutional goal in the matter of development of man and should be taken as included in “life” in article 21.” *Shakti Star Builders v. Naryan Khimali Tatome et al.* (1) SC 106, Civil Appeal No. 2598 of 1989 (JT 1990).

<sup>13</sup> “Evictions now a national crisis”, interview with *The Hindu*, 10 March 2006, <http://www.hindu.com/2006/05/10/stories/2006051005811100.htm>

most exceptional circumstances and in the full respect of international standards.<sup>14</sup> These principles are also outlined in the recent *Basic principles and guidelines on development-based evictions and displacement* prepared by the UN Special Rapporteur on Adequate Housing.<sup>15</sup>

OMCT condemns the fact that the Howrah Municipality, the Union Government of India and the State Government of West Bengal have breached their international obligations under the ICESCR,<sup>16</sup> and have consistently ignored the international principles governing forced evictions, such as the ICESCR General Comments 4 and 7,<sup>17</sup> and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which provides basic compensatory principles for victims of evictions.<sup>18</sup> Finally, OMCT recalls the pronouncement of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities addressing legal responsibilities in forced evictions in which the Sub-Commission unambiguously states that “ultimate responsibility for preventing evictions rests with Governments”.<sup>19</sup>

### **Requested actions:**

*Please write to the Union Government of India, the State Government of West Bengal and the Howrah Municipal Corporation.*

*Regarding the Belgachia Bhagar eviction in Howrah, urge them to:*

- Halt immediately the on-going eviction operation until an impartial evaluation by an independent body on the situation is carried out, and until the international standards on forced evictions are properly met, including freedom from violence.
- Ensure that any protest or demonstration related to the eviction is not met with violence.
- Ensure, in the case that the eviction proceeds – following adequate and appropriate community consultation and with the community’s full approval – that the families and individuals affected are granted relocation, alternative adequate housing and compensation.

*On the issue of forced evictions in West Bengal in general, urge them to:*

- Implement without delay a binding national legal framework on evictions based on international human rights standards.
- Order a moratorium on all forced evictions until this national framework has been implemented.
- Order an impartial and independent inquiry into the way in which previous evictions were carried out. In particular, this inquiry should determine whether the competent authorities followed the requirements of national and international law and adhered to human rights standards, including prior consultation with and notification of the residents of the area. It should also ascertain the legal basis on which the eviction order was issued and whether alternatives to eviction were considered. In addition, the report of the inquiry should contain

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<sup>14</sup> Also stated in General Comment 4 of the Committee on Economic, Social and Cultural Rights (CESCR).

<sup>15</sup> “6. Forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement. Evictions must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law.” *Basic principles and guidelines on development-based evictions and displacement*, A/HRC/4/18 5 February 2007.

<sup>16</sup> India accessed to ICESCR on 10 July 1979.

<sup>17</sup> CESCR, General Comment 7 on the ICESCR. *The right to adequate housing: forced evictions*, UN Doc. E/C.12/1997/4 (1997).

<sup>18</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in 1985, <http://www.unhchr.ch/html/menu6/2/fs25.htm#2>.

<sup>19</sup> Resolution 1991/12 of 26 August 1991 on the issue of liability for forced evictions, <http://www.unhchr.ch/html/menu6/2/fs25.htm#2>

concrete proposals to ensure effective remedies to victims. The results of this inquiry should be promptly published.

- Ensure that appropriate legal action is taken to prosecute and punish all those involved in violations of the law in connection with unlawful forced evictions.
- Instruct all relevant authorities that further evictions may only be carried out after adequate consultation with those affected and clear prior agreement on adequate resettlement and compensation.
- Take immediate action to ensure that adequate alternative housing, redress and compensation are provided for victims of previous forced evictions.

## Addresses

Shri Manmohan Singh,  
Prime Minister of India,  
Prime Minister's Office,  
Room number 152,  
South Block,  
New Delhi 110 001, India  
Fax: + 91 11 2301 6857

Shri Shivraj Patil,  
Union Minister of Home Affairs,  
Ministry of Home Affairs,  
104-107 North Block,  
New Delhi 110 001, India,  
Fax: +91 11 2309 2979

Justice K. G. Balkrishnan,  
Chief Justice of India,  
Supreme Court of India,  
1 Tilak Marg,  
New Delhi, India  
Fax: +91 11 233 83792,  
E-mail: [supremecourt@nic.in](mailto:supremecourt@nic.in)

Justice Rajendra Babu,  
Chairperson, National Human Rights Commission of India,  
Faridkot House, Copernicus Marg,  
New Delhi 110 001, India  
Tel: +91 11 230 74448,  
Fax: +91 11 2334 0016,  
Email: [chairnhrc@nic.in](mailto:chairnhrc@nic.in)

Shri Budhadev Bhattacharya,  
Chief Minister,  
Govt. of West Bengal,  
Writers' Buildings,  
Kolkata 700001,  
West Bengal, India  
Fax: +91-33-2214 5480,

E-mail: [precycm@wb.nic.in](mailto:precycm@wb.nic.in) and [cm@ub.gov.in](mailto:cm@ub.gov.in)

Shri Ashok Bhattacharya,  
Minister-in-charge of Urban Development & Municipal Affairs,  
Govt. of West Bengal,  
Writers' Buildings,  
Kolkata 700001,  
West Bengal, India  
Tel: +91 33 22145497,  
Fax: +91-33- 2214 3853,  
E-mail: [cpimwb@cal3.vsnl.net](mailto:cpimwb@cal3.vsnl.net), [micma@wb.gov.in](mailto:micma@wb.gov.in), [6241@writerscal.gov.in](mailto:6241@writerscal.gov.in)

Chief Secretary,  
Government of West Bengal,  
Writers' Buildings,  
Kolkata 700001,  
West Bengal, India  
Fax: +91 33 22144328

Home Secretary,  
Government of West Bengal,  
Writers' Buildings,  
Kolkata 700001.  
West Bengal, India,  
Fax: +91 33 22143001,  
Email: [sechome@wb.gov.in](mailto:sechome@wb.gov.in)

Director General & Inspector General of Police,  
Government of West Bengal,  
Writers' Buildings,  
Kolkata 700001,  
West Bengal, India,  
Fax: +91 33 2214 4498 / 2214 5486

Honorable Chief Justice,  
Kolkata High Court,  
Kolkata,  
West Bengal, India,  
Fax: +91 33 22429158

H.E. Mr. Swashpawan Singh,  
Ambassador Extraordinary and Plenipotentiary Permanent Representative to the United Nations,  
Rue du Valais 9 (6ème étage),  
1202 Geneva,  
Switzerland  
Tel: +41 22 906 86 86,  
Fax: +41 22 906 86 96,  
Email: [mission.india@ties.itu.int](mailto:mission.india@ties.itu.int)

Mr. Dipak Chatterjee,  
Ambassador,

Embassy of India in Brussels,  
217 Chaussée de Vleurgat,  
1050 Brussels,  
Belgium,  
Fax: +32 (0)2 6489638 or +32 (0)2 6451869

Please also write to the Indian Embassy in your country.

**Information on action taken and follow-up**

OMCT would appreciate receiving information on any action taken in relation to the matters dealt with in this Action File so that it might be shared with OMCT's network and others interested in this issue. Please quote the code of this appeal on the cover page in contacting us.

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Geneva, 14 January, 2009

World Organisation Against Torture

P.O. Box 21 - 1211 Geneva 8

Switzerland

Tel.: 0041/22 809 49 39 / Fax: 0041/22 809 49 29

E-mail: [omct@omct.org](mailto:omct@omct.org) / Web: [www.omct.org](http://www.omct.org)