



Addressing the economic, social and cultural root causes of violence

OMCT ACTION FILE (IND 141207.ESCR)

INDIA: ANOTHER VIOLENT FORCED EVICTION BY POLICE IN KOLKATA, WEST BENGAL

Your action is called for to stop forced evictions in West Bengal

Homes and belongings of poor and marginalised families destroyed by police in Kolkata

Between 14 and 16 November 2007, police officers used violence to evict 58 poor households from their makeshift homes flanking a railway line near Armenian Ghat, Kolkata, in the *Indian* state of West Bengal.

The International Secretariat of the World Organisation Against Torture (OMCT), on the basis of reliable information received, strongly condemns this latest case of forced eviction in West Bengal. OMCT is also deeply concerned that incidents such as this 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.

According to the information received, the eviction of this community, which is largely made up of *Dalits* and Muslims, took place without warning and in inclement weather. A number of victims, including children, women and elderly persons, were physically ill-treated and subjected to violence, and homes and belongings were destroyed. Furthermore, international standards on evictions were not met: the evictees were not properly informed and were offered neither compensation nor alternative housing.

OMCT recalls that “As recognized by several human rights bodies, forced evictions constitute prima facie violations 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.”¹ Moreover, forced evictions intensify inequality, social conflict, segregation and “ghettoization”,² and OMCT expresses its concern that the systematic use of forced evictions by the State Government of West Bengal has had serious implications for the most socially and economically vulnerable sectors of society.

To prevent further acts of violence against those who live in the poorest forms of housing and occupy the most marginalised land, OMCT calls upon both the *Union Government of India* and the *State Government of West Bengal* to halt forced evictions and implement adequate rehousing and compensation programmes for those affected by urban redevelopment programmes of all kinds. In the extreme case where an eviction is objectively unavoidable, OMCT urges both Union and State governments to ensure that force and violence are not employed, and that human rights standards – as laid out in the eviction guidelines prepared by the UN Special Rapporteur on the Right to Housing - are fully respected.

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

² *Basic principles and guidelines on development-based evictions and displacement*, A/HRC/4/18 5 February 2007

Description of the events

It is reported that, around 9pm on 13 November 2007, an official of the Government Railway Police ordered the inhabitants of an informal settlement constructed on land delineated by the railway track and railway bridge near Armenian Ghat, to remove their shelters and leave the area immediately. The settlement consisted of 58 households living in homes constructed from plastic sheeting and similar materials. The majority of the residents of this settlement were rag pickers, van pullers and daily labourers belonging to *Dalit* or Muslim groups.



- Photo by MASUM Fact-Finding Team-

The Railway Police returned at 8am on the following day and, despite the rain, ordered the residents to remove the roofs of their homes, leave their belongings and immediately vacate the area. The inhabitants followed the orders and left their homes. At noon other police officers arrived, together with members of various political parties. In all, the police raided the area six times in a single day; throwing away the belongings of the evictees without giving them an opportunity to save their goods.

Residents reported a number of acts of violence and ill-treatment during the eviction process:

- Noor Jahan Begum was struck by the police while she was eating her meal at the side of the railway bridge;
- Alami Seikh, an 18 month-old child was injured on the head by a piece of wood thrown by the police;
- Kala Hazra, a 3 year-old child was hit by an object while the police were discarding the belongings of the evictees;
- Rahim Khan, a sick man of 50 years of age, was struck on the hand by the police while drinking water at the side of the railway track.

The following day - 15 November - at around 10 am, officials of the Railway Police again raided the area and destroyed an oven built by the residents. By the end of this 3-day eviction, all the shelters between the railway track and bridge had been destroyed.

According to the information collected by the Banglar Manabadhikar Suraksha Mancha (MASUM) Fact Finding Team, the version of the facts provided by the police authorities – specifically the Railway Protection Force and the North Port Police Station - were tainted by contradiction. Indeed, both authorities denied their own involvement. While the North Port Police declared that they had no information on the eviction and that the area fell under the jurisdiction of the Railway Police, an official of the Railway Protection Force claimed that the eviction order had been passed to the North Port Police Station because the area was under its authority. The same official also explained

that the eviction was due to the proposed re-construction of the railway bridge at Armenian Ghat. The MASUM Fact-Finding Team reported that the official informally stated that a number of political parties with an interest in the railway bridge project were also directly involved in the eviction.

Irrespective of the lack of clarity regarding the responsible police authority, it is evident that both the State Government of West Bengal and the Kolkata Municipal Corporation failed to respect the safeguards provided under international law, including the provision of prior information to residents, the preparation of a rehabilitation plan, and the protection from all forms of violence of the individuals affected.

Associated episodes of forced evictions in West Bengal

OMCT underlines that the Armenian Ghat eviction is not an isolated case, but rather the latest incident related to a policy of urban development and forced eviction supported by the State Government of West Bengal and the Kolkata Municipal Corporation. These evictions have consistently targeted the poorest and most vulnerable groups who lack the political influence necessary to voice to their concerns. OMCT recalls that:

- On 2 August 2007, officers from the Narkeldanga Police Station in Kolkata pulled down and burned approximately 100 makeshift houses inhabited by a predominantly Muslim community along the Rajabazar Canal in the Canal East Road area of the city.³
- In November 2005, approximately 25,000 people were evicted from their homes in Gobindpur Railway Colony, West Bengal, on the order of the Kolkata High Court.⁴
- On 15 February 2005, several thousand families were evicted in the South 24 Paraganas District, West Bengal to make way for a 21-kilometre road expansion project. No prior legal notice had been given to these families. Furthermore, the families were accused of illegally occupying the land and were neither resettled nor compensated.⁵
- 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. The households involved were evicted without any resettlement plan.⁶
- On 2 February 2003, approximately 7,000 *Dalits* were violently evicted from an area of Belilius Park, Howarah, where their community had resided for over 100 years.⁷
- 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.⁸

The domestic legal context

OMCT urges the Government of West Bengal to 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.”⁹

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.

³ Asian Human Rights Commission: <http://www.ahrchk.net/ua/mainfile.php/2007/2543/>

⁴ Asian Human Rights Commission: <http://www.ahrchk.net/statements/mainfile.php/2005statements/369/>

⁵ <http://www.foodjustice.net/ha/mainfile.php/ha2005/37/?print=yes>.

⁶ http://www.omct.org/pdf/ESCR/OMCT%20Appeals%202003_ESCR.pdf.

⁷ http://www.omct.org/pdf/ESCR/OMCT%20Appeals%202003_ESCR.pdf.

⁸ http://www.omct.org/pdf/ESCR/OMCT%20Appeals%202003_ESCR.pdf.

⁹ <http://www.unhchr.ch/html/menu6/2/fs25.htm#2>.

This was established under the Supreme Court's 1985 ruling in the case of *Olga Tellis v. Bombay Municipal Corporation*,¹⁰ and subsequently reiterated in the 1990 ruling in the case of *Shanti Star Builders v. Naryan Khimali Tatome*.¹¹ 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."*¹²

Violence and economic, social and cultural rights

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 most exceptional circumstances and in the full respect of international standards.¹³ These principles, in addition to the prohibition to carry out evictions during inclement weather or in a manner that violates human dignity and human rights, 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.¹⁴

Furthermore, forced evictions are frequently directed at the poorest and most marginalised sectors of society, involve violence and ill-treatment and result in physical and psychological injury to those affected. In this respect, OMCT emphasises that eviction policies result in homelessness and loss of livelihood, and hence exacerbate the already poor living conditions of the individuals and communities that are targeted.

OMCT condemns the fact that the Union Government of India and the State Government of West Bengal have breached their international obligations under the ICESCR,¹⁵ and have consistently ignored the international principles governing forced evictions, such as the ICESCR General Comments 4 and 7,¹⁶ and the Declaration of Basic Principles of Justice for Victims of Crime and

¹⁰ *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."

¹¹ *Shanti 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." *Shanti Star Builders v. Naryan Khimali Tatome et al.* (1) SC 106, Civil Appeal No. 2598 of 1989 (JT 1990).

¹² "Evictions now a national crisis", interview with *The Hindu*, 10 March 2006,

<http://www.hindu.com/2006/05/10/stories/2006051005811100.htm>

¹³ Also stated in General Comment 4 of the Committee on Economic, Social and Cultural Rights (CESCR).

¹⁴ "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.

¹⁵ India accessed to ICESCR on 10 July 1979.

¹⁶ CESCR, General Comment 7 on the ICESCR. *The right to adequate housing: forced evictions*, UN Doc. E/C.12/1997/4 (1997).

Abuse of Power, which provides basic compensatory principles for victims of evictions.¹⁷ 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”.¹⁸

Requested action

*Please write to the **Union Government of India, the State Government of West Bengal and the Kolkata Municipal Corporation**. Regarding the **Armenian Ghat** eviction ask them to:*

- Take immediate action to provide redress, compensation and adequate alternative housing to the victims of the eviction.
- Order an impartial and independent inquiry into the way in which the eviction was 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 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 these forced evictions.

On the issue of forced evictions in West Bengal, ask them to:

- Order a moratorium on all forced evictions until a binding national legal framework based on international human rights standards has been implemented.
- 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 forced evictions.

¹⁷Declaration 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>.

¹⁸ 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>

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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.

Geneva, 14 December, 2007

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