

“Right to Land is a human right!”

Interview with Shivani Chaudhry, Associate Director of Housing and Land Rights Network (HLRN)¹ (Habitat International Coalition – South Asia)

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Q. Shivani Chaudhry, like Ekta Parishad and other social movements your organization, Housing and Land Rights Network (HLRN), is working for land rights and land reform in India. In this context you are speaking of the «Right to Housing and land» while others are using the term «Right to shelter land». Why this difference?

A. From our point of view it's better to say “housing land” or what we are now calling “homestead land.” Because in human rights law, the terminology and framework is that of the ‘right of adequate housing.’ And housing is much more than just shelter, much more than a roof and four walls. We work within the framework of ‘adequate housing,’ which the UN Special Rapporteur on adequate housing² has defined as, “*the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity.*” This provides a much more holistic and comprehensive perspective linked to the right to an adequate standard of living, which is clearly much more than ‘shelter.’

The concept of «adequate housing» has further been elaborated in General Comment 4 of the UN Committee on Economic, Social and Cultural Rights and includes several key elements, including security of tenure, appropriate location, and cultural adequacy. That's why I feel that the term ‘shelter land’ is not as encompassing and a bit reductionist. If we're using the human rights approach, it may be better to use the term ‘land for housing’ or ‘housing land’ or ‘homestead land’ – which is a concept and term unique to India.

1 <http://www.hic-sarp.org>.

2 <http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>.

Q. Which other UN Institutions are involved in the Right to Housing?

A. There is an independent UN Special Rapporteur on adequate housing who reports to the UN Human Rights Council on the status of housing rights across the world. The UN Committee on Economic, Social and Cultural Rights, tasked with the mandate of monitoring state's compliance with the International Covenant on Economic, Social and Cultural Rights also deals with housing and land issues. It has issued two General Comments on housing- General Comment Four on the right to adequate housing which explains the seven elements of this right as well as state obligations towards realising the right to adequate housing, and General Comment 7 on forced evictions.³ Over the years, HLRN in collaboration with the UN Special Rapporteur, have expanded the elements to include several others. One of the additional elements is 'environment and natural resources', which include land. Thus, for us, land is an essential element of the right to adequate housing, and the right to land is thus concomitant to the right to adequate housing. One of the elements of adequate housing is also security of tenure. This means that people should not be able to be dispossessed or evicted from their land or housing. One of the major problems in India is forced evictions and land grabbing, which results in widespread displacement of people and communities. Security of tenure must include security over the house, but also over the land on which your house stands as well as the land around your house. From this point of view, the right to land is part of adequate housing.

Q. What do you do, if the people, who are living on the land, aren't at the same time the owners of the land?

A. There exist many different models of tenure. The problem is that everybody only recognizes individual freehold titles, which is the prevalent and most coveted concept in the west. But here in India (as in other countries), we have multiple forms of tenure, including arrangements which may not be formally recognised but which are still legitimate. A large percentage of residents, especially in urban areas, are also tenants. The various relationships between people and the land should thus be legally recognized. From my point of view, people have tenure and rights, but they are just not recognized by the state. I believe that everybody has human rights by virtue of being born, by virtue of being human. But whether the state recognizes those rights or not is a problem and that's where the challenge lies. So we

3 <http://www.unhcr.ch/tbs/doc.nsf/0/469f4d91a9378221c12563ed0053547e>.

are working towards recognition of our rights not towards rights itself; we already have rights, the crucial thing is to implement them.

Q. That means, what for you is at stake, is not the question of rights itself, but if you are able to include them in a legal framework?

A. Yes. Unfortunately, in India the human rights of people aren't realized, especially the right to adequate housing and the right to land is not realized. This is also a problem around the world. And so this recent development of the Indian government agreeing to provide land to all the landless in the country is positive. Many of the problems in India arise because people don't have land, or people who have land are being dispossessed and forcibly thrown of their land. So there are three critical dimensions of the land issue: one is to secure land and housing for the large number of landless and homeless people, second is to provide legal security of tenure to prevent those who have land and housing from losing it; and third is to restore land to those who have been dispossessed.

Q. How do you want to solve this problem?

A. We already have different agricultural land ceiling acts in India. But these are not implemented. But in urban areas the land ceiling act was abolished. The government introduced an urban renewal programme called Jawaharlal Nehru National Urban Renewal Mission (JnNURM)⁴. And the abolishment of the state urban land ceiling acts was a prerequisite to receive central government funds under this scheme. The land ceiling act gave us some basis to fight for equality. Land is an extremely political and economic issue. Every state government says «we don't have land for the poor». But there's always land for companies and real estate developers. Speculation on land and property in India is rampant and not controlled by the state; this leads to a huge inflation of property prices. This makes housing and land unaffordable for the poor and middle classes. This has also resulted in a huge imbalance in housing: the very rich have multiple houses and several houses are lying vacant, while on the other hand there is a huge housing shortage for the economically weaker sections (almost 27 million in urban areas and 48 million in rural areas).

⁴ <http://jnnurm.nic.in>

Q. So Land reform can be a direct link to poverty reduction in India?

A. Yes, absolutely. The government keeps talking about poverty reduction but it needs to address the causes of poverty. A very strong way of preventing people from becoming further impoverished, is to give them rights to their land: If so, they will be less likely to be displaced and less likely to migrate to urban areas and to lose their livelihoods and be pushed into poverty. Of course, giving land is not going to solve everything; it's just the first step. Once you have land, then you need access to resources, agricultural implements and access to credit. The larger agenda thus has to be of 'agrarian reform.' This needs to be accompanied by a moratorium on forced evictions and strong laws to protect people's rights, including their right to information, prior informed consent and participation.

Q. What are the most important concepts to promote land reform?

A. First, land should be considered a right that is integrally linked to the right to live with dignity and essential for the fulfilment of several other human rights, including housing, food, health, work, water, and security. At the international and UN level too, work is being done to promote the normative development of the right to land as a human right. The right to land also brings together civil and political, and economic, social and cultural rights. The right to land could be seen as a human right in itself, because it's so intrinsically linked to the right to life and to the right to live in dignity. Land is not just a social and economic but also a cultural asset. Communities, especially indigenous peoples and forest dwellers have strong cultural and spiritual ties with land. There is thus a very strong argument for the human right to land.

Q. The discourse about land reforms includes also a very strong gender dimension. How you want to make sure that women's rights are going to play a crucial role in the whole debate

A. Central to the issue of equality, social justice and poverty reduction, is the need to recognise women's rights over land. We have to articulate and advocate for a separate right for women over land. If not, it is likely that the title over land will be in the name of the man of the family. But men are more likely to sell the land, to move off the land. But if the land is in the names of women, they are more likely to hold on to it, because women are more responsible for the food, for providing for their family, and for sustaining livelihoods. A large

number of women in the country are now farmers. In many regions just the men migrate, while the women stay on and take care of the land. This is what we call the ‘feminisation of agriculture.’ More women become farmers, so we need to recognize them as farmers, and also give them land in their names, to enable them to cultivate it and have access to resources. While we are talking about land for individual women, it’s also important that common land in villages be given to groups of women. And we have examples of women doing collective farming, even in Ekta Parishad. They collectively cultivate the land and then they use the produce for their families. This gives them economic independence and security. They can independently purchase food and water for their children with it. If you look at the Agreement on Land Reforms between the Ministry of Rural Development (MoRD) and Jan Satyagraha which was signed this October⁵, women’s rights have been listed in an annex. So what we are saying is: if women’s rights over land are not an explicit point, women’s rights have to be included and made a priority in each of the ten points of the agenda.

Land should preferably not be jointly given, but should be registered just in the name of the woman of the household. If it’s marital property, which means that the husband brings some land into the marriage, the woman’s name should be added on to that at the time of marriage. But if land is allocated by the government to a family, it must be in the name of the woman. Special priority must be given to single women. For example there is a scheme of rural housing called the Indira Awas Yojana⁶ (IAY) and under that, if the government gives you money to build your house, it has to be registered in the name of the women. But so far, nobody is checking if it’s implemented adequately. Thus there needs to be a monitoring committee to ensure that schemes are implemented adequately and that women are able to benefit. One of the points in the agreement with the Ministry of Rural Development is to provide land for landless persons under IAY as well, which is a positive development.

Q. We can conclude: The special consideration of women rights is crucial for the whole project of a new law on land.

A. Yes, without that, nothing will change. But you have to remember that the agreement mentions a very small amount of land, just for ‘homestead,’ which is ten cents (400 square metres) per family. That’s a small amount of land. I think there should be some flexibility in the size depending on the size of the family, their livelihood, their agricultural needs. Land

⁵http://landportal.info/sites/default/files/agreement.final_goi_jan_satyagraha.pdf

⁶ <http://iay.nic.in/netiay/home.aspx>

and housing are integrally linked to livelihood. It is therefore critical that the homestead land provided is sufficient for people to continue with their livelihoods and protects their right to work along with the right to adequate housing.

While it sounds good on paper, that everybody will have land, the real question is how this translates into reality and how the government implements this, especially in the backdrop of persisting feudal land ownership models in rural India and large scale project-induced displacement. The government's land acquisition and rehabilitation bill must protect the right to land as well; otherwise we will have a situation of the same Ministry giving land to some people while encouraging the displacement of thousands from their land. This is not just counter-productive but also against human rights.

Q. Besides the feudalistic in rural, versus the new wealth structures in urban india, the land ceiling act and the Jawaharlal Nehru National Urban Renewal Mission (JnNURM): Where do you see the big differences between land right issues in urban and in rural India?

A. Living conditions are different in rural and urban areas, but the right to housing and land is at stake everywhere. And irrespective of whether you live in urban or rural areas, you need the same conditions for housing to be adequate: The location of the house has to be close to your livelihood, it has to be of the right material in accordance with the weather and the climate, it should be affordable, accessible, culturally adequate and have legal security of tenure. The provision of land for homestead in the agreement with the Ministry of Rural Development (MoRD) is only land for housing. But we also need to address three critical issues: One, the restoration of land that has been taken away from people. Second, redistribution of land to the landless. Third is the need for protection, so the land is not taken away from people who have it. Land is a very political issue with many dimensions; land for housing is just one component and it's very important that we push for it. Because generally the government's idea of housing is just: «We provide a flat for somebody in a building and that's it. Or, we just move a slum out of a city and we have done a very good job». In this way, people are forced to move to places far away from their livelihood with no services. They can't survive like that.

Q. So you're trying to prevent a type of 'development,' that has taken place for example like in Paris during the last century, where the poor, which became famous under the name of «Banlieus»?

A. Yes. In Delhi you have this whole idea of going vertical too. But for many people, especially in informal settlements, the home is also the place of livelihood. That's why the idea of land has to include the right to livelihood. This is critical, especially for women, who carry out a lot of work from home. For instance, women make spices, they do weaving, sew clothes, grow vegetables. They need land for that. I think the concept of land for housing, or homestead land, must include land for livelihood. For example even in urban areas this is very critical. In Delhi, many of the homeless are rickshaw-pullers. But they can't sleep in homeless shelters because there is no place for them to keep their rickshaws around the shelter, so they spend the whole night in the rickshaw. This clearly shows us how integrally housing is linked to livelihood.

Q. Have you already an idea, how you will implement this practically?

A. The government has promised to draft a central law for allocating homestead land across the country. As a member of the Task Force on Land Reforms, we will also be involved in the drafting of the law. We have to ensure that land is articulated as a human rights and social security issue. It's also important to make the link between poverty reduction and land rights. If we are able through a central law to recognise, protect and fulfil people's rights over their housing, land and other resources, it would be a big step forward in the struggle for social justice in India.

Q. If the law will pass, what is in your opinion essential to really implement it afterwards?

A. The new land law is obviously not going to change people's life completely. In India, there exists a huge gap between the law and implementation. The first step would thus be to ensure adequate implementation of the law. For this, intensive training of the bureaucracy would be required. Especially on women's rights. The government would also have to establish monitoring mechanisms to ensure that the law is implemented and that the most needy and marginalised groups are able to benefit from it. This includes dalits, tribals, pastoralists,

nomadic communities, and among them all, the women. Then people would need support in order to develop the land and construct adequate housing on it. There has to be clear criteria for determining the landless. And I would not be in favour of using very arbitrary 'poverty line' kind of notions, which are not rights-based. So we need a very strong human rights based criteria to determine who the landless people really are in a particular village, and who the people who don't have access to housing and resources are. Social movements and human rights groups should be involved in that process. We also have to make sure that people who get land also have legal security of tenure over the land. The title should be of the nature of an ownership right to prevent people from losing their land. Like in many countries, one of the problems in India is the concept of 'eminent domain' that needs to be challenged. The new law on land must be rights-based; must ensure the provision of legal security of tenure and must stress the link between land, livelihood, housing, food, health, dignity, poverty alleviation, gender equality and non-discrimination, especially for scheduled castes and scheduled tribes.

All this is not just about giving a piece of land; it's about social justice and human rights. It's about making amends for years of historical injustice. It's about restoring rights of those who have been discriminated against, displaced, and denied their land and housing rights.

Q. Is there a basis of international laws, on which you can already refer to in this process?

A. India has ratified several UN human rights treaties and is thus legally bound by international law as well as the Constitution of India that guarantees fundamental rights. It is thus time that national laws are promulgated on housing and land that meet these legal commitments of the government. India can take the lead in promoting the concept of 'homestead land' internationally and also move towards progressive land reform measures that could be emulated by other countries. Given the recent Universal Periodic Review of India at the UN Human Rights Council and India's adoption of recommendations to reduce poverty and improve the status of economic social and cultural rights, the promotion of the right to land across the country, especially for women, would be a significant step forward towards meeting this commitment.