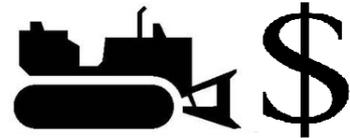




# HOUSING AND LAND RIGHTS NETWORK

## Habitat International Coalition



### Counting Costs:

### Quantifying the Consequences of Forced Eviction and Displacement

Forced evictions and displacement of communities from their homes and habitats destroy lives and livelihoods, particularly of the poor, with support from both the state and private actors. In the context of urbanization and the scramble for economic resources, this phenomenon continues to accelerate across many countries. Most of these evictions are justified on grounds of “public purpose,” which continues to remain undefined and loosely interpreted by governments. Such evictions result from various causes ranging from slum demolitions, urban renewal, environmental conservation, road construction, dams and special economic zones. Forced evictions violate a number of human rights, including the rights to land, adequate housing, security of the person and home, health, work/livelihood, food and water, and deny vital access to natural resources.

In the absence of comprehensive human rights-based laws and policies on housing and rehabilitation, the need for the application of human rights standards is urgent and necessary in affected countries.

The organizations that make up the Housing and Land Rights Network (HLRN) seek human rights solutions to the grave problems arising from eviction and displacement. An integral part of the Habitat International Coalition (HIC), HLRN shares with HIC a worldwide membership, including social movements, grassroots organizations, civil society organizations, NGOs, academia and research institutions, and likeminded individuals. Those partners form as an independent, international, nonprofit alliance of organizations and individuals working in housing rights and human settlements. The Coalition’s objectives are:

1. Recognition, defense and full implementation of everyone's right everywhere to a secure place to live in peace and dignity.
2. Defending the human rights of the homeless, poor and inadequately housed.

As the specialized group of Habitat International Coalition members promoting the norms, international jurisprudence and methodology of “the human right to adequate housing” and equitable access to land, HLRN has developed housing rights monitoring and problem-solving tools and methods that are grounded in human rights norms and principles. Those include methods for determining the full consequences that persons and households undergo in the process of forced eviction and displacement. HIC-HLRN now offers to support local efforts actually to quantify the affected persons’ related costs and losses with a methodology that housing and land rights defenders, legal practitioners, field researchers and/or actual victims can use to determine a wide range of losses and costs that typically are associated with forced evictions, but are rarely recognized or documented. This method gives precision and a solid basis of argument to support claims of losses and damages from both small-scale and large-scale

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eviction cases. By “counting the costs,” we are now able to determine how, and the degree to which forced-eviction and displacement processes actually deepen poverty.

The Counting the Costs project adapts a quantification method to select cases in order to:

1. Identify the costs and losses prior to, during and after forced eviction and displacement;
2. Expose the actual and full costs of development projects involving displacement by calculating and including those incurred by effected persons and households;
3. Prove that forced evictions and displacements deepen poverty and deprivation at all stages;
4. Deter future evictions and displacements by recording, and making perpetrators responsible for the full costs and losses they cause;
5. Provide guidance toward remedies, including application of the reparations framework (defined in international law as a right);
6. Contribute to conflict resolution (in small-scale cases) and transitional justice (in grand-scale cases);
7. Support local monitoring of housing and land rights violations in select and strategically important cases;
8. Share quantification experiences among HLRN Member organizations and other interested parties across regions.

HIC-HLRN currently offers technical and financial assistance to local partners in Cameroon, India and Kenya for their participation in the Counting the Costs project.

## ***Background***

Motivated by the deprivation caused through impoverishment, dispossession and forced evictions practiced variously across all regions, Habitat International Coalition’s Housing and Land Rights Network developed and produce the [HIC-HLRN Toolkit](#), an encyclopedic resource of legal materials, methods, monitoring and reporting forms, potential solutions and monitoring-and-evaluation guidance. The 1,000+ page Toolkit is available in CD format, as well as a document that can be downloaded in PDF format via HLRN website in English, Spanish and Arabic. (The English version is regularly updated.) Within that process, HIC-HLRN developed the [Housing Rights Violation Loss Matrix](#) as a central tool and reference for its work.

The *Housing Rights Violation Loss Matrix* was developed as part of a broader methodology in HLRN’s encyclopedic “Housing and Land Rights Monitoring Toolkit. The HLRN “Toolkit” seeks to “put the legal specificity of the human right to adequate housing into your hands so that, together, we can make it real.” HLRN proposes that the way to pursue that process, from an informed and authoritative position, is by applying the meaning and contents of the human right through monitoring its implementation toward alternative solutions to problems and violations in the field of human settlements.

The HLRN Toolkit was designed for use by “the young activist with a CBO or NGO, as well as their communities confronting problems in the housing rights sphere”; and also by “professionals in the technical fields, research institutes, policy makers, judges and all others concerned with problems solving and dispute resolution in the field of housing and human settlements.” The HLRN Toolkit takes the user through a series of ten “logical steps, which coincide with the functions of human rights monitors”:

1. Explanation of the basic entitlements linked to the right to adequate housing;
2. Introduction to key sources, both legal and popular, substantiating claims to each entitlement;

3. Explanation of the applicable over-riding principles
4. Discussion of the guarantees underlying the entitlement
5. Examination of the threats, obstacles that may impede the fulfillment of the right
6. Identification of victims and vulnerable persons likely to suffer violations
7. Quantification of impact and losses of violations using the Housing Rights Violations Loss Matrix as an eviction impact assessment (EvIA) tool
8. Identification of duty holders responsible for remedying specific violations
9. Exploration of actions that can be taken
10. Evaluation and follow-up.

Step 7 is crucial. The instructions of the *Toolkit* emphasize how important it is to portray the whole picture with the focus on the victims' experience with a methodology for quantifying losses and costs of a violation / deprivation, at Step 7. This guide for "quantifying losses" introduces the methodology for capturing the costs and quantifying the deprivation as much as possible. It is particularly well suited to the violation of forced evictions.

The *HRLN Loss Matrix* was designed for application to a variety of housing rights violations, including evictions, but not that all of its values could be quantified in all cases of application. Since its formal publication in 2005, further work has been done to make it more eviction specific. Building on the 2007 release of the UN Special Rapporteur's *Basic Principles and Guidelines on Development-based Evictions and Displacement*,<sup>1</sup> which included a call for the widespread, systematic use of eviction impact assessments, HLRN and partners such as National Center for Advocacy Studies (NCAS) and Youth for Unity and Voluntary Action (YUVA), in India, produced a concept note and arranged an expert seminar in India during July 2009 "to develop a workable eviction impact assessment mechanism."<sup>2</sup> According to the concept note, "Given the potential usefulness of this tool as a means to help assess and minimize forced evictions in India, we feel it would be worthwhile to develop the modalities of eviction impact assessment as an operational tool. This would entail examining and studying existing available mechanisms and adapting relevant components of them to create a specific eviction impact assessment tool."

The result of the India-led effort resulted in the current version of the *Loss Matrix* as an "eviction impact assessment tool," consistent with the Special Rapporteur's *Basic Principles and Guidelines*, to capture the damages / costs / losses arising at any and/or all stages of the eviction/displacement process: pre-eviction, during eviction and post-eviction.

The *UN Basic Principles and Guidelines on Development-based Evictions and Displacement* that were presented in the report of the UN Special Rapporteur on adequate housing in 2007 (hereafter *UN Guidelines*), are an important tool, as they call for a check on forced evictions and only sanction them under "exceptional circumstances." In the event that evictions must take place for reasons such as health and security, they lay down human rights principles that must be adhered to, as well as clear steps and procedural requirements to be followed before, during and after an eviction.

One of the useful proposals presented in the *UN Guidelines* calls for a mandatory eviction impact assessment (EvIA) to be conducted for any planned/proposed eviction. This assessment would take into consideration all potential costs that could be borne by individuals and communities in the event of an eviction. The intention of such an assessment is to "secure fully the human rights of all potentially affected groups and communities, including their protection against forced evictions."<sup>3</sup>

The *UN Guidelines* specifically advise that:

32. States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. “Eviction-impact” assessment should also include exploration of alternatives and strategies for minimizing harm.

33. Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly and marginalised sectors of society. All such assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed....

42. Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document nonmonetary losses to be compensated.

Any appraisal of forced evictions would have to include both material as well as non-material costs, such as psychological and social effects of the eviction and other indirect costs, including loss of children’s education, loss of access to adequate healthcare facilities, loss of livelihoods and access to critical natural resources, including water, forests, livestock, and fodder. The disproportionate impacts of evictions on women, children, persons with disabilities, older persons, minorities, indigenous peoples, tribals, scheduled castes<sup>4</sup> and other groups also need to be considered.

While the *UN Guidelines* present the need for such an assessment to be conducted, they do not specify the components or indicators of such a tool.

Given the potential usefulness of this tool as a means to help assess and minimise forced evictions, HLRN has worked with the former UN Special Rapporteur on adequate housing and a group of independent experts, on developing the modalities of the “eviction impact assessment” as an operational tool.<sup>5</sup>

HLRN already had developed a tool known as the *Housing Rights Violation Loss Matrix*, which member organizations have been using for several years to calculate both material and nonmaterial losses resulting from forced evictions and other violations of housing and land rights. The ‘eviction impact assessment tool’ attempts to further build on and expand the *HLRN Loss Matrix*.

This Eviction Impact Assessment Tool enlists components to be factored into the calculation of both material and nonmaterial losses and follows steps a cover comprehensively the experiences of loss and costs potentially involved in *any* forced-eviction and displacement process. This methodological development and redesign is regularly undergoing field testing, adaptation and improvement. As a function of that evolutionary learning process, follow-up in the form of expert seminars and strategy-exchange meetings are carried out under a specific project linking quantification efforts in Cameroon, India and Kenya. Other applications of the methodology are now undertaken by HLRN and local partners in Egypt, as well. The HIC-HLRN partners and Members in the Middle East/North Africa now face the potential of applying these methods in the reparations mechanisms that form part of transitional justice in those transformed countries.

The final EvIA tool developed by HLRN in consultation with experts could act as a practical tool that would hopefully be used by social movements, campaign groups, civil society organizations, human rights activists, and UN agencies working to prevent evictions. It could also be used as a resistance tool and help communities in negotiating with governments and private companies to prevent evictions and to demand just rehabilitation and restitution based on international human rights standards and national legal obligations.

The tool could also potentially be used to encourage relevant government agencies/ ministries/ departments to monitor evictions and to ensure the identification of independent institutions to monitor and investigate forced evictions. As provided in the *UN Guidelines*:

69. States should actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long-term consequences of evictions, including forced evictions, that occur within their jurisdiction and territory of effective control. Monitoring reports and findings should be made available to the public and concerned international parties in order to promote the development of best practices and problem-solving experiences based on lessons learned.

70. States should entrust an independent national body, such as a national human rights institution, to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law.

### ***Monitoring with Human Rights Norms toward Solutions***

With HLRN's Housing Rights Violation Loss Matrix its on-line global monitoring system, the *Violation Database*, and this more-recent work on eviction impact assessment are firmly and explicitly rooted in a normative, human rights framework, with primary emphasis on the right to adequate housing and related rights as enshrined in international treaties, including the Covenant on Economic, Social and Cultural Rights. As a complement to these monitoring tools and methods, HIC-HLRN and its Members remain regular contributors to the review of States parties to the relevant human rights treaties, especially the UN Committee on Economic, Social and Cultural Rights. The outcomes of these critical reviews, "constructive dialogues" with governments and the resulting findings and recommendations reflect the heightened attention to housing and land rights conditions as a priority of human well-being and, consequently, of statecraft.

The HLRN eviction impact assessment tool is firmly and explicitly rooted in this normative, human rights framework, with primary emphasis on the human right to adequate housing and related human rights. A key purpose of the HLRN Toolkit and the "Counting the Costs" project is to "return the legal achievements" of establishing this framework "to the people." A cornerstone of the framework is the status of the right to adequate housing as a fundamental human right (indispensable to the enjoyment of other rights), as well as the fact that the practice of "forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing." HLRN presentations, therefore, emphasize the reparations framework, which specifies seven dimensions of the right to remedy in the case of gross violations of human rights: 1. Restitution; 2. Return; 3. Resettlement; 4. Compensation for resulting costs and physically unrecoverable losses; 5. Rehabilitation (economic, social, psychological, medical, cultural, etc.); 6. Promise of nonrepetition; and 7. Satisfaction.<sup>6</sup>

### ***The Methodology***

The current version of the EvIA methodology, like its *Loss Matrix* predecessor, can be applied to monitor the consequence for each of the elements of the human right to adequate housing. The tool can be used for any and all categories of housing rights violation (including evictions). It aims to capture, assess and document:

- Both personal costs experienced by victims and public or social costs or housing rights violations.
- The material and otherwise calculable costs resulting from the violations are determined for each unit (i.e., household) affected and then added together;
- In the case of multiple units affected, a representative sample is obtained to determine the average values, which then are to be multiplied by actual numbers of units affected;

- Incalculable losses recorded and reported in narrative terms. Such narrative explanation and analysis is used as an accompaniment to the quantification table;
- Both short-term/immediate and long-term values;
- Personal injury and pain-and-suffering damages, calculated by using methods derived from applicable local jurisprudence, legal cases, actuary science or international practice.

### *Using the Tool*

Using the tool for accurate and thorough quantification of costs and losses requires a great deal of cooperation with the affected community and a sustained relationship with them. The tool reflects an attempt to be comprehensive in the sense of covering any eventuality in the forced-eviction or displacement process. However, because of its theoretical and thorough nature, it would be ambitious to expect the intended user to apply and research all possible categories of loss, cost or damage, particularly those users from understaffed and under-resources civil society organizations. Therefore, the user should apply categories of assessments to those subjects of priority in any particular situation.

Examples of application:

- Material losses can include: the structure; the plot; contents; collateral damage; infrastructure; business losses; equipment; prospective income; mortgage, other debts and penalties; livestock; land; trees / crops; lost / decreased wages or income; health care; interim housing; bureaucratic and legal fees; alternative / replacement housing; resettlement; transportation costs. HLRN provides a housing contents inventory schedule online;
- Nonmaterial losses can include: health; living space; reconstruction licensing; psychological harm; disintegration of family; loss of community; investment in infrastructure; investment in sanitation and waste-management systems; investment in security systems; investment in educational infrastructure; heritage;
- Victims'/affected persons' nonmaterial costs can include: environment / ecology; standing / seniority; political marginalization; social marginalization; further vulnerabilities;
- Material costs for parties other than direct victims (public costs) can include: police, bulldozers, legal practitioners, army, other forces, bureaucratic and personnel costs;
- Nonmaterial costs for parties other than direct victims can include: social costs, civic order and political legitimacy.

Building on the approach of the *UN Basic Guidelines*, the EvIA tool is divided into four functional stages corresponding to the forced-eviction or displacement process.

#### **1. Baseline survey**

The first part of the tool addresses the situation of the household(s) in their “natural” state; that is, preceding the eviction/displacement process. It assumes the advantage that the monitor would be present at the stage in which s/he and the members of the household or community could conduct an inventory of all that they have, in advance of any notification of an impending forced eviction or displacement.

#### **2. Pre-eviction**

Using the baseline information as the optimum advantage, in order to begin calculating the impact of a threatened or announced eviction or displacement. At this stage, the threat, as such, may lead to decreased housing values and more-precarious social conditions. It may also result in unrest, resistance and conflict with material or other calculable consequences.

### **3. Assessment of losses/costs > time of eviction**

During actual eviction, material losses are typically immediate and great in degree, especially if the forced eviction is carried out with violence. The consequence could involve the loss of home, building materials, land and accumulated possessions, as well as socially produced services and infrastructure, or social capital may deteriorate with the dispersal of the community.

### **4. Assessment of losses/costs > post-eviction**

After the eviction, the household or entire community could be homeless, having lost the house and all that is connected to it, or vital possessions, facilities, food, or even documents necessary for maintaining some level of well-being. In addition to the material losses, the consequences also may be nonmaterial, including the foreclosure of access to sacred sites. In this longer-term assessment of consequences, the user of the EvAI tool may find that, with or without replacement or interim housing, the inhabitants continue to suffer unprecedented costs and losses. Therefore, the post-eviction stage of the assessment tool could be used in several scenarios, including:

- A. Transit camps or temporary intermediate shelter
- B. Resettlement site
- C. No resettlement
- D. Cases of compensation

As in the last of these scenarios, the quantification method can help determining the adequacy of any compensation scheme by allowing for a comparison between the value of the compensation and actual costs and consequences of the (often) people.

Created in a simple Excel format, it is possible to modify the EvAI tool to the user's discretion. Modifications should be indicated, and also be shared among the community of monitors to ensure compatibility of findings. For example, certain direct and indirect victims' losses may for some reason need to be separately calculated. In that case, for example, an additional column could be added.

It is important to indicate a global cost figure for the violations under review. The column at the far right of the Excel file form under each category of cost should be totaled using an embedded formula.

HLRN and the "Counting the Costs" project's eviction impact assessment tool can be very constructive in providing an authoritative basis for calculating damages (i.e., costs and losses) as well as projecting programs and budgets needed for such reparation components as social, cultural, economic and other forms of rehabilitation and affirmative action.

With the HLRN eviction impact assessment tool one can conceptualize the extent of a future or past violation and, to the extent that this is possible, calculated. This can serve either as a prevention initiative to anticipate consequences, and so to warn against and hopefully deter the violation, or as a remedial tool for a retrospective investigation toward formulating claims for remedy and reparation. As indicated in the abovementioned concept note: "As a largely preventive mechanism, the eviction impact assessment would be a pre-eviction modality, and would hence deter future violations by demonstrating their true cost."

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## Notes:

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<sup>1</sup> The UN Guidelines can be found at: [http://www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf).

<sup>2</sup> HLRN, "Developing an Eviction Impact Assessment Tool" (EGM concept note), 2009, 2.

<sup>3</sup> *UN Guidelines*, para. 32.

<sup>4</sup> An official term used in India referring to marginalized social segments eligible for affirmative action.

<sup>5</sup> The preliminary workshop to discuss the tool was held in Pune, India, and was co-hosted by Housing and Land Rights Network (HLRN), Youth for Unity and Voluntary Action (YUVA), and National Centre of Advocacy Studies (NCAS). Other participating institutions included: Indian Institute for Human Settlements, Tata Institute of Social Sciences, Environics and Kalpvriksh and Eco Tools.

<sup>6</sup> As defined in "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," General Assembly resolution A/RES/60/147, 21 March 2006.