

# HUMAN DEVELOPMENT AND SHELTER: A HUMAN RIGHTS PERSPECTIVE

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## **Table of Contents**

### **Part I - Human Rights-Based Approach to Development**

1. Human Rights and Development: Interlinkages and Interdependence
2. The International Law on Development and the Human Right to Development

The Human Right to Development (HRD)  
UN World Conferences and the Human Right to Development  
The International Law on Development: Core Content  
Sources of ILD  
Core Principles of ILD

3. The UN Human Rights System
4. The Road Ahead from Istanbul

### **Part 2 - Housing Rights, Human Rights and Human Development: Intertwined and Inseparable**

1. Introduction
2. Common Questions and Misperceptions About Housing Rights

Housing Rights Are Too Vague To Be Defined  
Are States Obligated to Build Homes for Everyone?  
Aren't Housing Rights Only a Part of the Larger Right to an Adequate Standard of Living?  
National Laws Do Not Recognize Housing Rights, So How Can International Law?  
Are States Which Have International Legal Obligations on Housing Rights Required to Adopt National Legislation?

Is the Adoption of National Legislation Sufficient for States to Comply with Their Legal Obligations?  
Housing Rights Cannot Be Violated in the Same Way as Other Human Rights  
Housing Rights Are Not Justiciable  
Housing Rights Are Unaffordable

3. The Way Forward: Several Ways to Make Housing Rights Real
    - New International Standard-Setting
    - The Appointment by the UN Commission on Human Rights of a Special Rapporteur on Housing Rights
    - Preventing Housing Rights Violations: Strengthening the Activities of the UN High Commissioner for Human Rights and UNCHS (Habitat)
    - Critically Examining 'Enablement' as the Primary Global Housing Policy
    - National Housing Rights Acts in All States
    - Exposing and Prosecuting Housing Rights Violators
- [Appendices](#) **Annex I:** Content of the Right to Development

**Annex II:** A Synthesis of State Obligations

**Annex III:** CBO's and NGO's Working for Housing Rights

**Occasional Paper 21 - HUMAN DEVELOPMENT AND SHELTER: A HUMAN RIGHTS PERSPECTIVE**

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## **Part I: Human Rights-Based Approach to Development**

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### **1. Human Rights and Development: Interlinkages and Interdependence**

For much too long there has been reluctance on the part of developing country governments, bilateral development assistance agencies and multilateral and UN-system development agencies alike, to adopt a human rights-based approach to development. This has been largely due to a failure to recognize the varied relationships between development and human rights and a consequent failure to link human rights and development in mutually reinforcing ways.

Today, however, there does exist a body of international law on development (ILD) comprising the UN Charter; the Universal Declaration on Human Rights; the 1986 General Assembly Declaration on the Right to Development, the Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights; a variety of international human rights and environmental treaties, and the Declarations and Programs of Action of a round of UN World Conferences from Rio to Beijing. It is vital that development (indeed, all development activity) be brought under a regime of "rule of law". It is vital that all development activities conform fully to the principles of the international law on development. For such a premise (indeed mandate) one need not look beyond the Charter of the United Nations. In his Foreword to a Harvard Law School

symposium commemorating the 50th Anniversary of the UN (Harvard Journal of International Law, Vol. 36, pp. 267-272) Secretary-General Boutros-Boutros Ghali emphasizes:

"In 1945, the founders of the United Nations identified peace, development, human rights, and international law, as the four cornerstones of the Charter. Increasingly, we have come to understand that these elements of the UN Charter are linked and intertwined."

It is indeed important to emphasize, as a matter of practical significance, these four "cornerstone" objectives:

- Lasting peace must be built upon respect for the human rights of all people.
- Development is the key to the progressive realization of human rights.
- Human Rights provide the value framework and the criteria for accountability for **all** UN activities with respect to peace and development alike.
- International law is the vehicle to achieve these purposes.

The importance of international law to development is explained by the Secretary-General:

"Narrowing through compromise and consensus-building the scope for disparate policy strategies, rewarding certain practices and punishing others, prohibiting certain actions and encouraging others, enshrining certain principles and rejecting others--these are the means by which international law helps to add coherence to global development efforts. "Agreeing on practical measures to implement a common approach to problems is the essence of a coordinated approach. Through the coordination of disparate policies and efforts, the promotion of goals and targets, the establishment of norms and standards, the negotiation of treaties and conventions, international law provides both a vehicle for development cooperation and a mechanism for action."

It is vital, therefore, that all those involved in the conduct of development activities as well as all those affected (beneficially or adversely) by such development activities understand, respect, and implement the principles and standards enshrined in ILD. Only then can human rights and concepts of "transparency," "good governance" and "accountability" become more than rhetoric. Only then can, in words of the UN Secretary-General, "the most necessary of all political principles--the principle of the rule of law" be strengthened in and through development.

Indeed, anything other than a human rights-based approach to development would be lawless, unjustified and unjustifiable.

## **2. The International Law on Development and the Human Right to Development**

The International Law of Development (ILD) is a body of principles which incorporate and apply the mandate of the UN Charter and international human rights and environmental law to the processes of development. These principles have been more fully elaborated, during the past decade, by the United Nations Declaration on the human

"Right to Development" and by the Declarations, Commitments and Programs of each of the five World Conferences on development issues convened by the UN during the '90s. The ILD is not an invention of lawyers. It is a product of the experiences of three earlier "development decades", a reflection of a significant paradigm shift in development thinking and of the increasing participation of civil society in debates focusing on the meaning of "development": What should be the goals? How can they be realized?

The importance of these questions is underscored by a range of lessons taught by the prior "development decades". Many kinds of once-favored development activities (e.g., big dams and mega infrastructure construction, large-scale irrigation, "green revolution" and capital-intensive commercial agriculture, exploitation of natural resources, unregulated industrialization) have clearly inflicted impoverishing but uncompensated harms on millions of already vulnerable people (displacement, landlessness, degradation of human habitats and environments). Many others (e.g., agricultural and rural development projects) have produced benefits to some but losses to many others (in the form of indebtedness, insecurity in land, dependency on new crops, money lenders and landlords). Systems of development planning, and projects in all sectors had regularly ignored the concerns of women, small farmers and other neglected groups. The rhetoric of "participation" had not been translated into action. As the World Bank announced in 1990, there had been a visible neglect of the growth of poverty and the creation of opportunities for those enmeshed in it. Indeed, the marginalization of the poor, those displaced, small farmers, tenants, unskilled workers, fisherfolk, indigenous and pastoral people, disfavored regions and ethnic groups had created now well-known categories of "development victims." Perhaps most serious, because it is productive of so many development failures as well as development wrongdoing, were the pathologies of development--administration characterized by corruption, discrimination or indifference, the absence of participation, transparency, "due process" and accountability, and by ignorance of or insensitivity to human rights.

These flaws were repeatedly documented and lamented in a now, enormous literature, including official reports which received widespread attention such as: the "Morse Report on the World Bank-financed, notorious Sardar Sarovar project; Bank reports on the effects of nonparticipatory, authoritarian, structural adjustment on "development" in Sub-Saharan Africa; and (in 1990) on the growth of world poverty; the "Brundtland Report" on the environmental dangers of unregulated development; UNDP's "Human Development Reports", and many others.

The "lawless" character of the business of "development" became the ultimate target of many demands from diverse groups--environmentalists, women, workers, social justice and human rights activists, religious groups and others--during the latter '80s. With the ending of the "cold war," there were also increasing pressures for democratization of processes. An "international civil society" became a powerful new force in shaping a new development discourse and influencing international policy.

In official circles that discourse now reflected, in effect, a new multipurpose but holistic concept of both the goals of development and essential processes to achieve

them. Of course "economic growth," was essential, but development must be truly "participatory" and "people" or "human-centered"; it must fully incorporate women as participants and address their concerns; it must be governed by "good governance"; it must protect and promote "human rights" and the building of "democracy". All this plainly calls for a "rule of law"--new standards and procedural guidelines geared to the realization of these goals. That need was reflected in the articulation of new policies emphasizing human rights and civil society goals by many bilateral agencies; in principles favoring participation elaborated by OECD's Development Advisory Committee; in the promulgation of a series of World Bank "Policy Procedures" addressed to all of the subjects above and to the need for an "independent review" of bank projects which allegedly violated Bank standards.

It is important to reiterate that the international law on development has evolved as a response to development failures, development wrongs and development pathologies. Hence, it should not be viewed grudgingly by development agencies as something imposed upon them. Rather, it should properly be viewed as a set of corrective policies, principles and procedures that have evolved out of some three decades of development practice and that embody the consensus of the international community today. This becomes self-evident from a review of the content of ILD.

#### The Human Right to Development (HRD)

Clearly, the single, most important source of the ILD is the Declaration on the Right to Development adopted by the UN General Assembly, not without some rancour, on December 4, 1986. The Declaration explicitly affirmed the existence of a human right to development.

Such a right was implicit in the Universal Declaration of Human Rights and in the Covenant on Economic, Social and Cultural Rights. But the landmark General Assembly Declaration referred to hereafter as DHRD) not only reaffirmed the existence of the right to development, it went further and elaborated the content of the right, as well as the specific obligations for States and Governments (both individually and collectively) that flow from the right. The right to development has been repeatedly reiterated and further elaborated--by consensus--at the UN World Conference on Human Rights (Vienna), the International Conference on Population and Development (Cairo), the World Summit on Social Development (Copenhagen) and the Fourth World Conference on Women (Beijing). It is significant to note that while the 1986 General Assembly Declaration on the Right to Development was not obtained by consensus (apart from a few abstentions, the U.S. was conspicuous as the sole dissenter), each of the above mentioned UN World Conferences have unanimously (by consensus and not by vote) reaffirmed the right to development as a "universal and inalienable right and an integral part of fundamental human rights" (Article I(10) Vienna Declaration, Principle 3, Cairo Programme of Action, Commitment 1(n) Copenhagen Declaration and Article 213 Beijing Platform of Action). Thus, there is no doubt, today, that the right to development is not a mere pipe

dream or ideological slogan. It is a human right guaranteed by international law.

## UN World Conferences and the Human Right to Development

As detailed in Annex I (Content of the Right to Development), the UN World Conferences, by consensus, have reaffirmed "the right to development, as established in the Declaration on the Right to Development, as "a universal and inalienable right and an integral part of fundamental human rights" (Vienna Declaration, Article 10). The Declaration on the Right to development explicitly states in Article 9(1) the, "All aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole". Thus, all aspects of the Declaration set out above constitute binding international law.

The Vienna Declaration makes clear that "the promotion and protection of all human rights (including the right to development) and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation" and that "the promotion and protection of all human rights is a legitimate concern of the international community" (Article 5). Accordingly, it calls for the enhancement of the coordination of the activities of the UN, its organs and specialized agencies in this regard. This has obvious implications for the parts of the UN system involved in international development cooperation, especially so far as the right to development is concerned.

The Cairo programme of action makes clear that, "the right to development must be fulfilled so as to equitably meet the population, development and environment needs of present and future generations" (Article 3). Commitment 1 of the Copenhagen Declaration and Programme of Action calls upon States and the UN system, to ensure that all human rights (including the right to development "are respected, protected and observed"). The Beijing Platform for Action reaffirms the importance of the right to development for the advancement of women. Thus, as we approach a new millennium, the right to development (firmly rooted in international law) takes its rightful place among fundamental human rights.

## The International Law on Development: Core Content

### *Sources of ILD*

ILD is contained in a large number of international treaties, conventions, resolutions and Declarations of the UN General Assembly and the instruments of UN World Conferences and Summits. During the past 50 years, the international community, under the auspices of the United Nations (the agency which is "the leading proponent of international law" and "the most important forum of international cooperation") has enacted a large number of international human rights instruments which contain many of the core principles of the ILD. The foundations for the ILD are the International Bill of

Rights (the Universal Declaration and the two human rights Covenants which elaborate it) and other widely ratified treaties such as the Women's Convention. These instruments set out rights now deemed to be fundamental ends and means of development, and they mandate realization of these rights through the processes of development.

These mandates and their implications (which formed the basis for the UN Declaration on the Right to Development) have been reaffirmed, and more detailed principles calling for their implementation have been set out in the instruments adopted by each of the recent World Conferences which focused on key aspects of global change and development.

These conferences include the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992; the World Conference on Human Rights, held in Vienna in 1993; the International Conference on Population and Development, held in Cairo in September 1994; the World Summit for Social Development, held in Copenhagen in March 1995; and most recently the Fourth World Conference on Women in Beijing in September, 1995.

### *Core Principles of ILD*

The whole body of law comprising ILD is formidable because there are now so many international instruments which speak on the subject of the role of human rights and development. For pragmatic policy makers, however, it is important to distill the core principles of ILD. The following is a summary:

1. Development, in accordance with the principles set out below, is the inalienable human right of all peoples. States and all relevant international agencies must:

- promote and protect the realization of the right by enacting and enforcing measures necessary to give effect to the principles set out below.

2. Development must be people-centered, i.e., development priorities, policies, plans, programs and projects must be designed, above all, to:

- respect the human dignity of all persons;
- provide for, or assure, realization of the basic needs of all people for shelter, food, health, and adequate subsistence;
- secure the liberty and physical security of all peoples.

3. Development must be designed and implemented to promote the progressive realization of human rights--all of the interrelated, indivisible rights now established by international law. States must adopt, and international development agencies must promote effective measures to:

- recognize these rights and incorporate them into law;

- promote knowledge of these rights and capacities to assert them;
- assess the social and human rights impacts of all development projects and programs;
- provide procedures and institutions enabling and protecting free exercise of these rights;
- provide procedures and institutions enabling full and adequate redress for victims of violations of these rights.

While development must facilitate the enjoyment of all human rights, the lack of development may never be invoked to justify denial of the duty to promote their progressive realization.

4. Development must be participatory. Governments and international development agencies must recognize the rights of all persons to participate in, and contribute to, economic, social and cultural development, promotion of these rights, which are guaranteed by international law, is an essential element of the human right to development, and governments and international development agencies must adopt appropriate measures to enable and empower people to:

- take part, at all relevant stages, in all spheres of development, including the design, implementation and review of policies, plans, programs and projects;
- form their own self-managed organizations to enable effective participation;
- exercise all internationally recognized political and civil rights necessary to participate effectively;
- initiate self-reliant, self-managed development efforts in all spheres affecting their economic, social, cultural and political development.

States must also adopt appropriate measures to:

- decentralize and devolve powers of governance to encourage regional and local participation and self-determined development;
- encourage the exercise of rights of association at all levels free from any unwarranted governmental interference.

5. Development must promote the right of peoples to self-determination, notably their right to exercise full sovereignty over their country's natural wealth and resources.

This sovereignty must be realized:

- through exercise of rights of participation guaranteed by international law;
- through measures which fully respect all of the principles set out above and below.

6. Development must work to eliminate all forms of discrimination against women and cultural, ethnic or other groups through processes which provide affirmative measures to address the historic effects of such discrimination, for example:



- to reform legal systems;
- to prohibit discrimination in respect of employment, education, family affairs, land rights, credit services and other entitlements;
- to redress the effects of past discrimination in the above spheres;
- to educate and empower women and other victims of discrimination in regard to their rights and to enable their effective participation in development processes, and in regard to the determination of appropriate measures to implement the above objectives.

7. Development must be concerned with the protection and rehabilitation of environments, and it must be environmentally sustainable. This principle includes measures to:

- conserve ecological systems and natural resources for the benefit of future generations;
- provide for the assessment of environmental and social impacts of all relevant development activities, and the setting and enforcement of standards to govern them;
- provide for environmental education;
- provide for free and meaningful participation in the above.

8. Development must respect and protect cultures and cultural diversity. This may include measures to:

- promote and protect all human rights;
- protect language diversity;
- special measures to protect the lands, cultures, and autonomy of indigenous, pastoral and other peoples occupying ancestral homelands.

9. Development must promote democratic systems of governance, particularly with respect to the processes of development. This should include measures to promote:

- civic education, including human rights awareness.
- legal environments conducive to the exercise of rights of participation, freedom of the press and the capacitation of civil society.
- participatory and representative institutions of government;
- frequent, free and fair elections; democratic political parties accountable to appropriate standards to assure the integrity of electoral processes;
- transparency, accessibility, integrity and fairness in public administration;
- recognition and respect for human rights in development processes, notably rights of participation;
- accountability to these standards on the part of all responsible officials.

10. Development must promote a rule of law designed to secure the above principles. This may include measures to:

- empower courts or other tribunals to enforce the appropriate rules and to strengthen their independence and capacities to enforce rights embodied in these principles;
- provide effective processes for mediating group grievances and remedying harms or threatened harms to distinct groups;
- provide legal resources, in cases of need, to such groups.

The above core principles, and indeed all of the norms contained in ILD are law and bind States, the UN system and its agencies and multilateral and bilateral development assistance agencies. A human rights-based approach to development involves the application and promotion of those core principles in and through development. ILD reflects a new species of international legislation designed to fulfill the UN Charter's commitment to promote "economic, social and cultural development" and "human rights" as complementary objectives grounded in respect for "the worth and dignity of the human person". It is somewhat academic to debate whether and how the ILD fits with conventional categories of international law. As the Secretary-General has, several times, observed: the creation of new international law is necessary to provide coherence and principled guidelines to the objectives and procedures of international cooperation, to produce development in accordance with the Charter; and that law has been forged by repeated Assembly resolutions and World Conference instruments directed to this end. The real question is how the ILD can be enforced.

The implementation must come from two basic sources: (1) All international development agencies are plainly obligated to respect and promote the ILD: it is plainly directed to them; they can promote it through the development of new policies and operational standards and procedures; (2) International civil society (ranging from jurists and scholars to action-oriented citizens' organizations) can legitimately demand respect and adherence through such activities as promotion of awareness of the ILD, monitoring compliance, using UN and other fora to expose noncompliance and inaction and through the processes of active participation in development activities. Above all, the agencies of the United Nations have a responsibility to further develop and adapt the ILD to changing circumstances.

The ILD and HRD also reiterate a number of process-related rights--rights which must be respected in the process of development. These rights include the right of participation; the right to know and freedom of information essential to the exercise of the right of participation; the right to nondiscrimination and freedom from exclusion in respect of development; the right to accountability; the right to preventive remedies and to redress when human rights are violated in the process of development; and the right to adequate and effective compensation, resettlement and other remedies. These process rights are of crucial importance because they command and demand respect now, even while other rights command only "progressive realization" and "to the maximum" of a State's "available resources".

The ILD and HRD have clear policy and legal implications for development agencies and national governments. They must comply with the provisions of ILD and must

respect, protect and promote HRD and all other human rights. But, clearly, it is for communities and peoples that the ILD and HRD have greatest value, both in asserting development as a human right and in resisting "perverse development" (to use the phrase of the late Ernest Feder) which violates human rights, destroys communities and degrades environments. But if the ILD and HRD are to become valuable resources to communities and peoples, it is clear that NGOs have several crucial roles to play in promoting human rights education about ILD and HRD; in monitoring progressive realization of the HRD; in providing support to those who are asserting the HRD; in protesting violations of the HRD; in critiquing laws, institutions, structures, processes and practices of development agencies to ensure compliance with HRD and in elaborating further the content and components of the HRD.

Development agencies (both multilateral and bilateral) also have crucial roles to play in both adopting and promoting the principles of the ILD and HRD and in ensuring that national development agencies do the same. Otherwise, the "oversight" function of development agencies may well degenerate into the practice of "overlook!"

### **3. The UN Human Rights System**

On December 10, 1948, the UN adopted the Universal Declaration of Human Rights, ushering in an era of rights. In the 48 years since then, the UN has evolved a complex human rights system progressing from standard-setting and promotion, to monitoring and enforcement. While the system is far from perfect, it does represent a major achievement of human kind during a century that has also, unfortunately, been witness to a plentitude of inhuman wrongs. The achievements on the standard-setting front have indeed been considerable. An International Bill of Human Rights (comprising the Universal Declaration and the two Human Rights Covenants) has come into existence. The Universal Declaration (adopted without a single vote of dissent) has come to acquire a universal and fundamental legal, political, and moral authority. The universality of the Declaration is now beyond serious challenge, even by the developing nations who were not parties to the Declaration because their independence came after 1948. Nation states are no longer able to claim that human rights issues are beyond the reach of the international community of nations because they are a matter of domestic jurisdiction of the concerned States. Indeed, some international law scholars are of the view that customary international law has emerged embodying the principles of the Universal Declaration and the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

In addition to the Universal Declaration and the two human rights Covenants, the last 40 years have witnessed the creation of numerous other human rights standards in the form of Conventions (such as those dealing with the rights of women, and rights against racial discrimination) and UN Declarations (such as the UN Declaration on the Right to Development and the Declaration on the Right of Minorities).

Moreover, the Universal Declaration's impact has not been confined to the international level. The Declaration has helped inspire both regional human rights instruments (for example, in Europe, in the Americas and in Africa) and national human rights law enshrined in constitutions and domestic legislation. The Universal Declaration has also had considerable impact on the legal practice concerning human rights in very many countries. In sum, the worldwide acceptance of the generality and universality of the Declaration has helped launch a human rights movement with international agencies, governments and nongovernmental organizations, all taking appropriate actions in defense of human rights.

Of crucial importance to this human rights movement are the various human rights treaties, conventions and declarations because they set out the standards and rights that demand recognition and respect--rights for people worldwide to assert equally in their struggles against impoverishment and exploitation and in their struggles for empowerment and justice. A recent compilation by the UN Human Rights Centre of such international human rights instruments contains some 95 such instruments dealing with a range of issues from self-determination; social welfare; progress and development to war crimes and crimes against humanity and humanitarian assistance. These human rights instruments provide a variety of principles and standards that can be invoked in respect of the whole gamut of shelter-related issues, both proactively and preventively as well as reactively after violations have occurred.

Implementation of the principles, standards and rights set out in these international human rights instruments was left initially to a variety of treaty bodies created under the instrument itself such as the UN Human Rights Committee (under the Covenant on Civil and Political Rights), the Committee on Economic, Social and Cultural Rights (under the Covenant on Economic, Social and Cultural Rights), the Committee on Women (under the Convention on Elimination of all forms of Discrimination against Women) and the Committee on the Rights of the Child (under the Convention on the Rights of the Child) to name but four such treaty bodies. These treaty bodies are playing two main roles. First, they monitor State compliance with their obligations under the treaty. States, parties to the treaty are required to periodically present country reports dealing with their obligations under the treaty and the Committee examines such reports, calls for clarifications, if necessary, and makes comments and recommendations on issues arising out of such reports. NGOs can furnish the Committee with information that complements or challenges the content of such reports. A second function that the Committees play is one of clarification and further elaboration of the provisions of the treaty by issuing what are technically called General Comments or General Recommendations. Thus, for example, the Committee on Women has issued a very useful General Recommendation on violence against women which clearly spells out the obligations of States' parties. NGOs can help in the prioritization and development of such General Comments, urging relevant treaty bodies, for example, to address specific human rights issues relating to shelter. The UN Human Rights Centre has produced a very useful Fact Sheet, No. 21 on The Human Right to Adequate Housing which details the various provisions found in different human rights instruments that relate to the human right to adequate housing. NGOs could help develop similar compilations of other human rights related to shelter as

a first step towards working towards further elaboration through General Comments by appropriate treaty bodies. A third function performed by treaty bodies operating under treaties which have an Optional Protocol, is that of handling complaints relating to violations. NGOs have crucial roles to play in respect of such complaints procedure. They can also lobby for the inclusion of an Optional Protocol in treaties such as the Covenant on Economic, Social and Cultural Rights and the Convention on Elimination of all forms of Discrimination against Women, which currently do not have any complaints procedures.

Despite the best efforts of such treaty bodies, the main weakness of the UN Human Rights system relates to monitoring and enforcement. Accordingly, over the years, a variety of supplementary fact-finding mechanisms have evolved. These special mechanisms, in a very creative manner, have helped increase the investigative reach of the UN human rights system. They remain largely underutilized thus far, however, by NGOs. An appendix to this paper sets out the existing mechanisms, several of which can be utilized by groups concerned with human rights issues pertaining to shelter. Thus, for example, there are Special Rapporteurs dealing with thematic issues such as torture, internally-displaced persons, forced evictions, racism, etc., or dealing with specific problematic countries such as Myanmar, Sudan, the former Yugoslavia, the Occupied Territories, etc. The Special Rapporteurs can study, investigate and propose resolutions on specific subjects such as, for example, forced evictions. There are also Working Groups on thematic issues such as minorities, development, etc., who work towards standard-setting by way of Declarations or draft Conventions and who also perform monitoring and investigative functions.

The chief weakness of the UN human rights system lies in its enforcement mechanisms. There are historical explanations for such weakness. As far back as in 1946 the UN Commission on Human Rights was created and the next year, a Sub-Commission on Prevention of Discrimination and Protection of Minorities was set up. The first task for the Commission on Human Rights (CHR) was to prepare an "international bill of human rights". It achieved this task in stages, drafting the Universal Declaration of Human Rights which was adopted on December 10, 1948 by a vote of 48 states in favor, none against and eight abstentions (Saudi Arabia, South Africa and the socialist states). Several years later, in 1966, it drafted the two Human Rights Covenants which came into force only in 1976--after the minimal required ratifications were reached. At its inception, the CHR did not view itself as an enforcement body. Indeed, at its very first session, it adopted a resolution denying itself the mandate to enforce human rights. The resolution stated, "The Commission recognizes that it has no power to take any action in regard to any complaints concerning human rights". This "no power to act" doctrine remained in effect till 1970 and states were permitted to violate human rights with impunity. The thousands of complaints sent to the UN concerning human rights violations were consigned to the limbo of private meetings of the CHR. The CHR refused to investigate or take action. It was only in 1970 that ECOSOC adopted Resolution 1503 setting up a "Procedure for Dealing with Communications relating to violations of Human Rights and Fundamental Freedoms". This important development came as a result of pressure from the 68 new UN members (36 from Africa, 16 from Asia, 10 from western Europe, 5 from

eastern Europe and 1 from Latin America) who, by the mid-1960s had brought the UN's membership to 119 states. The pressure came mainly from the nonaligned and African states and was directed mainly against the apartheid system in South Africa. In 1967, ECOSOC acceded to such pressure and adopted Resolution 1235 (XLII) authorizing the CHR and the Sub-Commission to examine communications reserved by the UN regarding "gross" violations of human rights and fundamental freedoms. Accordingly, between 1967-1970, the Commission and Sub-Commission, turning their attention to how best to handle communications relating to violations of human rights, devised the confidential 1503 procedure. So named after ECOSOC Resolution 1503 (XLVIII) of 1970, the procedure provides that a working group on communications of the Sub-Commission annually screens communications and refers to the Sub-Commission those which appear to reveal a consistent pattern of gross and reliably attested violations of human rights, the Sub-Commission considers these, along with replies, if any, from governments and determines, on the basis also of all "other relevant information", which situations it will refer to the Commission. For its part, the Commission may decide to take no action to discontinue consideration under 1503 and consider the situation under another procedure, to make a thorough study of the situation, or to call for an investigation by an ad hoc committee. While this entire procedure is confidential and its effectiveness has thus been questioned, since 1978, the Chair of the Commission has each year publicly announced the names of the countries on this confidential or "black list" prior to the Commission's public debate on violations. Governments are known to go to great lengths to avoid being "black-listed" although, frequently, this is through lobbying, "politicking" or public relations' work rather than by moderating their repressive behavior.

Today, the CHR and the Sub-Commission have evolved into fora which provide the international community an opportunity to mobilize shame and indignation against gross human rights violations. Lack of political will by member States, still prevents full enforcement of human rights and limits the UN from holding states accountable to international human rights standards. The international "generation of shame" has come to be perceived as the main sanction against human rights abuses and abusers.

Promotional functions, advisory services and technical assistance are provided by the UN Centre on Human Rights and at the apex of the UN human rights system, there now is a UN High Commissioner for Human Rights with a wide-ranging mandate. The High Commissioner plays a variety of roles from promotion and fact-finding to diplomacy and negotiations on human rights issues. The UN human rights system is far from perfect. NGOs, from developing and developed countries alike, gathered in historic numbers at the UN World Conference on Human Rights in Vienna (in 1993) expressed several pressing concerns regarding the UN human rights system:

- The continuing international neglect (especially within the UN human rights system) of economic, social and cultural rights.
- The individualist orientation of the work of most international human rights organizations and their relative failure to address issues relating to group rights.

- The singular emphasis on civil and political rights (and that, too, with an individualistic focus) in the development of human freedom indices and human rights policies (and conditionalities) by international donor agencies.
- The continuing reluctance to acknowledge issues relating to women's rights (and rights of the disadvantaged and oppressed groups) as human rights issues.
- The continuing reluctance to acknowledge that grave and gross human rights violations are perpetrated, both by state and non-state violators.
- The pathetic inadequacy of remedies (and lack of preventive remedies) for victims of human rights violators and the feeble (or nonexistent) sanctions against human rights violators under both international law and national law.

But it is important to stress that the UN human rights system is in a constant state of evolution--especially when under pressure from NGOs. It is also important to note that the UN human rights system, recognizing inherent limitations of working at an international, intergovernmental level, has been actively promoting regional and national human rights systems as well. NGOs can play especially active roles in their national systems. Typically, a national system has components similar to the international human rights system. Standard-setting takes place in national constitutions and laws, especially those which incorporate obligations under international human rights instruments. Monitoring is in the hands of a number of Ministries (e.g., home affairs, law and justice) as well as special national institutions such as Ombudsman, National Human Rights Commissions, specific Commissions of Inquiry and Specialized Commissions on Women, Minorities or Indigenous Peoples. Enforcement roles are played by the judiciary and special tribunals. Needless to add, a crucial component of any national system are the NGOs who play roles of advocate, interlocutor and intermediary. Development agencies have been providing assistance to developing countries wishing to create national institutions. However, their approach, thus far, has been unimaginative and limited to trying to create institutions like National Commissions and ombudsman as pale mirror images of their counterparts in developed countries. Instead, national institutions may well be designed so as to include national, functional equivalents of UN system human rights mechanisms such as Special Rapporteurs, Special Representatives, Special Procedures, Working Groups, etc.

#### **4. The Road Ahead from Istanbul**

The UN human rights system is still very much in a state of evolution. Entering the 1990s, much progress had been achieved in respect of standard-setting. Progress had also been made through special procedures and special mechanisms to strengthen the fact-finding and investigative reach of the UN Human Rights system. Efforts to strengthen enforcement appear to have shifted to the national level. The UN Conference continuum of the 1990s offers unique opportunities for further development of the UN human rights system, especially if human rights NGOs, environment NGOs and development NGOs can cooperate together and, if similar cooperation can take place within the UN between its development agencies (notably UNDP), its environment agencies (notably the Commission on Sustainable Development and UNEP) and its human rights agencies

(notably the UN High Commissioner for Human Rights, the UN Centre on Human Rights, the treaty bodies and special mechanisms).

Such cooperation would be directed towards a three-pronged human rights strategy:

1. developing capacity for more accurate monitoring of the progressive realization of all human rights and especially economic, social and cultural rights;
2. developing capacity for progressive realization of the human right to development and capacity for monitoring such progressive realization;
3. developing capacity for monitoring the progressive implementation of the programmes of action of the various UN World Conferences from the Rio Agenda 21 to the Beijing Platform of Action and what will emerge from HABITAT II at Istanbul. Developing such capacity requires three core, essential and interrelated elements:
  - a. measures and indicators that relate to standards, rights, principles, commitments and targets reaffirmed by or established by the UN Conference continuum;
  - b. mechanisms, both intergovernmental and nongovernmental to utilize such measures and indicators for monitoring purposes;
  - c. advisory services and technical assistance to develop the human resource capabilities needed, both at national and international levels and at nongovernmental, governmental and intergovernmental levels as well, to achieve (a) and (b) above.

HABITAT II provides the ideal forum for attempting to develop consensus around the above human rights strategy and to forge the cooperation necessary to develop the above core elements for such strategy. The HABITAT II agenda focuses on issues which necessitate: cross-sectoral approaches; holistic concepts of development, environment and human rights, and interdependence of actors: across professional boundaries, and across civil society, governmental, intergovernmental, and corporate (national and multinational) affiliations. Moreover, the HABITAT II agenda focuses on issues at a level of specificity which helps translate the relatively abstract concepts of "social development" from the World Summit on Social Development and the concept of "a fundamental and inalienable human right to development" from the UN World Conference on Human Rights to a level of pragmatic application around concepts of "habitats" and "shelter", "participation", "human rights", "the human right to development" and, ultimately, the right to be human--of which the right to be woman is a vital and integral component.

Let us explore what a human rights-based approach to development would bring to the issues on the agenda of HABITAT II. A first step would be to develop a conceptualization from human rights perspectives of some of the familiar issues before HABITAT II. The very concept of habitat embodies several human rights--the right to housing and shelter, the right to community, the right of a community to its resource base, and the right of a community to its environment. Both rural habitats and urban habitats would be protected. Shelter cannot be seen in isolation from the rights of



subsistence and livelihood. Sewage and sanitation issues clearly implicate the right to health. The right to affordable and adequate housing would require land policies, urban planning and regulations to check inflationary land development activities. The right to safe housing would require programs for urban renewal. As part of poverty alleviation, there would be need for programs that provide low-income housing and such programs would need to be linked to transport and infrastructure activities as well. The upgrading of slums would require the legal recognition, perhaps, of squatters and the initiation of sites and services' programs. Forced evictions would need to be accompanied by effective and equitable programs of resettlement. If the physical integrity of the community is to be safeguarded, there would need to be adequate law enforcement. The human rights of especially vulnerable groups such as internally displaced persons, minorities and migrant workers, would need to be especially safeguarded.

In addressing the above issues there would be a mutually reinforcing interplay between international human rights standards and the principles and commitments set out in the Declarations and Programmes of Action of the UN World Conferences. For example, the 15 Principles enunciated at the Cairo Conference on Population and Development reaffirm the centrality of human rights and of the right to development; gender equality and equity; people-centered development; environmental sustainability; eradication of poverty as an indispensable requirement for sustainable development. Similarly, the Cairo Programme of Action sets out bases for action and explicit objectives (e.g., to reduce urban bias and isolated rural development) which constitute criteria or commitments susceptible of being monitored. At times, there are very explicit prohibitions, "to put an end to all forms of forced migration, including ethnic cleansing" (Cairo Programme of Action, page 66). The repeated reiterations in these World Conference documents constitute the present global consensus on development. Those working on issues of shelter could very well compile the relevant provisions of the various international human rights instruments (currently numbering more than 95) and add to them the international commitments and targets of the UN World Conferences. These, in turn, could be carefully monitored. Violations could be placed before the relevant UN special mechanisms; issues for further development would be placed before the relevant working groups; the call for development of measures and indicators could be placed before the relevant UN agencies. Thus, for example, the Human Development Report Office of UNDP could be encouraged to develop indicators and data on development displaced persons, on numbers participating in resettlement programs and such data could help in policy formulation to promote progressive realization.

Similarly, we could focus on Commitment 1 of the Copenhagen Declaration of the World Summit on Social Development that deals with "enabling environments" to achieve social development. The elements of an enabling legal environment are elaborated in the Declaration and this makes it possible to monitor which of these elements are in place and in which countries.

A variety of monitoring tools and mechanisms need to be utilized. These could include:

PRINCIPLES which must be adhered to (monitoring adherence or non-adherence). These principles could be drawn from international human rights law, the international law on development, international environmental law, UN World Conference documents, including the Copenhagen Declaration as well as principles drawn from national constitutions and laws.

STANDARDS which must be complied with (monitoring compliance or noncompliance) such as nondiscrimination, meeting minimal basic needs, etc.

COMMITMENTS which must be met (monitoring fulfillment of nonfulfillment of commitments). A comprehensive listing of international commitments agreed to at a large number of UN Conferences is contained in a very useful document prepared by the UN Secretariat for the PrepCom of the World Summit on Social Development. (Review of existing international commitments relevant to poverty, employment and social integration. A/conf. 166/pc/16, August 16, 1994).

TARGETS which must be achieved (monitoring achievement or nonachievement). Several such targets are referred to in the Copenhagen Declaration (for example, commitment to encourage, ratification of CEDAW to year 2000) and in the international commitments' document cited above.

RIGHTS which must be respected, protected, promoted and realized.

DUTIES AND OBLIGATIONS which have been agreed to by consensus, for example, at the WSSD and which are contained in the Copenhagen Declaration (e.g., the obligation set out in commitments in respect of structural adjustment programmes "to develop policies to reduce their negative impacts").

Monitoring progressive realization of human rights requires a very different mind set from that involved in monitoring violations of human rights. The purpose of the former is not to condemn but rather to identify needs for advisory services, technical assistance and human capacity-building. The various component rights of the human right to development need to be taken seriously--both the substantive rights as well as the procedural rights. Close to 50 years of work in the field of human rights has demonstrated that it is possible to work from universal declaration and universal affirmation towards universal realization. The same can be achieved with respect to development. The UN World Conference continuum has forged a new global consensus on development. We need now to move from affirmation to realization however progressively that might be.

## **Part II: Housing Rights and Human Development: Intertwined and Inseparable**

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### 1. Introduction

*"...An equally basic essential to peace is a decent standard of living for all individual men and women and children in all nations. Freedom from fear is eternally linked with freedom from want....We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. Necessitous men are not freemen. People who are hungry and out of a job are the stuff of which dictatorships are made. In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all -regardless of station, race, or creed. Among these are...the right of every family to a decent home".*

- Franklin D. Roosevelt

*"Rich man took my home  
and drove me from my door  
and I ain't got no home  
in this world anymore...."*

- Woody Guthrie

*"In no economically advanced country--a sadly neglected matter--does the market system build houses the poor can afford".*

- J.K. Galbraith

Contrary to what several governments actively involved in the Habitat II process would like people to believe, there is absolutely nothing new, innovative or radical about the term 'the human right to adequate housing'. Some argue that Habitat II is not the proper forum for creating "new" human rights, such as the right to adequate housing -- as if such a right did not exist and would only come into existence if recognized in Istanbul.

While numerous legal arguments could be put forward rejecting these anti-housing rights sentiments, it is useful at the outset to cite one of many recent pronouncements to the opposite effect. An Expert Group Meeting on the Human Right to Adequate Housing held from 18-18 January 1996 at the UN Offices in Geneva and co-organized by the UN Centre for Human Rights and the UN Centre on Human Settlements (Habitat) concluded that:

...a right to housing expressed in one formulation or another has been recognized, in addition to the International Covenant on Economic, Social and Cultural Rights (1966), in each of the following instruments: the Universal Declaration of Human Rights (1948, article 25); the International Convention on the Elimination of All Forms of Racial Discrimination (article 5(e)(iii)); the International Convention on the Elimination of All Forms of Discrimination Against Women (1979, article 14(2)(h)); the Convention on the Rights of the Child (1989, article 27(e)); and the Convention Relating to the Status of Refugees (1951, article 21). (para. 3, Report of the Expert Group Meeting) [1](#)

The International Covenant on Economic, Social and Cultural Rights (1966), which has now been ratified by 133 countries, provides perhaps the most significant international legal source of the right to adequate housing in article 11(1):

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and **housing and to the continuous improvement of living conditions**. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. [emphasis added] [2](#)

Neglecting to reaffirm this and other central housing rights provisions within the context of Habitat II will do little to strengthen faith in the seriousness with which governments or the United Nations take basic matters of human rights. The refusal by certain governments to accept and strengthen housing rights standards belittles and degrades the contents of a dynamic legal system these very same governments have long and arduously helped to build. Moreover, this retrograde approach effectively treats legal standards as if such norms were merely weak and pliable policy statements to be vanquished in accordance with prevailing economic winds. This is certainly not what human rights law, and the inherent dignity of the human person this legal regime is devoted to protecting, is all about.

To live in a place, and to have established one's own personal or collective habitat with peace, security and dignity should neither be considered a luxury, a privilege nor purely the good fortune of those who can afford a decent home. Rather, the imperative of adequate housing for personal security, privacy, health, safety, protection from the elements and many other attributes of a shared humanity, has led the community of nations to recognize adequate housing as a basic human right. And thus it remains an oddity that all references to this right in the draft Habitat Agenda are currently surrounded by brackets; an indication that at least as far as this document is concerned, some important decisions will be made during Habitat II on the human right to adequate housing.

The recognition and promotion of the human right to adequate housing by the United Nations effectively began immediately following the creation of the organization itself, during the drafting of the Universal Declaration on Human Rights. Since the adoption of the sacrosanct Universal Declaration in 1948, the human right to adequate housing has been subsequently reaffirmed and strengthened, with the United Nations placing considerably expanding attention to various measures designed to promote and protect these rights in recent years. In recognition of the indispensable importance of adequate housing for individuals to live a full life and to enjoy and benefit from all human rights, this right now finds legal substance within many international and national legal texts.

In addition to these, numerous resolutions recognizing and reaffirming the right to adequate housing have been adopted by the General Assembly (1986, 1987), the Economic and Social Council (1987), the Commission on Human Rights (1986, 1987, 1988, 1993), the UN Commission on Human Settlements (1993, 1995) and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (1990-1995), each of which have given added weight to the primacy of housing rights. [3](#)

The right to adequate housing has also been extensively recognized in the framework of a wide range of international statements of law and policy in related fields, as distinct from human rights law and mechanisms. For instance, housing rights provisions are contained in Agenda 21 (1992), the UN Vancouver Declaration on Human Settlements (1976), the UN Global Strategy for Shelter to the Year 2000 (1988) and other texts.<sup>4</sup>

The UN Centre for Human Rights and the UN High Commissioner for Human Rights (Mr. José Ayala Lasso) have placed expanding attention on the promotion of the human right to adequate housing.<sup>5</sup> The UN Centre on Human Settlements (Habitat), and coordinating body of Habitat II, has recently initiated activities toward a **Housing Rights Strategy**, which could potentially yield enhanced international action on this right.<sup>6</sup>

Within the human rights policy-making organs, a UN Special Rapporteur on Promoting the Right to Adequate Housing was appointed in 1993 to undertake a three year study on developing practical measures toward the realization of this human right. In pursuit of his mandate, the Special Rapporteur, Mr. Rajindar Sachar, prepared four detailed reports and concluded his work in August 1995.<sup>7</sup>

Progress on housing rights continues, as well, at regional and national legislative levels. For instance, within the last month a right to housing has been formally established in article 31 of the revised European Social Charter and article 25 of the new South African Constitution.<sup>8</sup> Housing rights are clearly not an issue of the past as these recent examples show.

These norms and other activities revolving around housing rights have assisted in giving housing rights a prominent place within the global human rights agenda over the past decade. At the same time, however, these immense strides, while generating much attention and translucence, have certainly yet to transform governmental approaches towards solving the global housing crisis. An understanding of the actual legal nature of housing rights remains lacking, with much of the acrimonious debate built on a range of common misperceptions about this right.

## **2. Common Questions and Misperceptions About Housing Rights**

The very existence of housing rights as human rights has been subject of controversy and dispute during the past year. This unfortunate effort hinges on several key arguments:

The right to an adequate standard of living, including food, clothing and housing does exist under international law, however no 'right to adequate housing' exists as an independent right;

There is nothing in domestic law which in any way guarantees an individual right to adequate housing. Therefore, no support should be given to international activities leading to the creation of "new human rights" such as housing rights;

To include housing rights within the international system of human rights, would "weaken and dilute all human rights";

Decent housing has always been a **goal** of policy makers, however, it is not and cannot be a **human right**; and

Housing rights are inconsistent with the UN Global Strategy for Shelter to the Year 2000 (GSS).

These five points form the basis of the current United States-led campaign on the non-existence of the right to adequate housing. [9](#) Needless to say, these arguments are severely at odds with the prevailing situation regarding housing rights under long-established and consensus-built international legal and human rights standards.

Ideological or economic considerations aside, a partial explanation for such views may relate to issues of definition and terminology. Indeed, the terms of common parlance are as diverse as: housing rights; the right to adequate housing; the human right to adequate housing; the right to housing, the right to the city; livelihood rights and so forth. A phrase such as 'the right to adequate housing' could invoke connotations of the direct governmental provision of a house to all citizens invoking this right, or be taken at the most superficial level to imply that it is the State and only the State which bears any responsibility for securing adequate housing for a given population. From a semantic point of view, it is perhaps understandable that such perceptions have emerged.

A deeper knowledge of State practice, the contents of national and international legislation relating to housing and human rights, the current nature of housing and housing rights jurisprudence at all levels, activities by United Nations and other human rights bodies, the inherent housing-related elements possessed by other human rights norms and many other considerations reveal, however, much more complex and refined views concerning the existence, contents and obligations arising pursuant to the right to adequate housing.

Because the right to adequate housing encompasses a much broader range of concerns than simply the direct provision of a dwelling to the homeless by the State, or reductionist notions of housing constituting exclusively 'four walls and a roof', this right must be understood holistically as constituting both an independent right **and** a composite right comprising all relevant human rights matters linked in any way to the existence, protection and security of the home. For instance, constituent rights such as those to privacy, to non-discrimination, to equality of treatment, to personal security, to family life, to freedom of movement and to choose one's residence must be incorporated into any analysis striving to provide clarity about the right to adequate housing. The enjoyment or denial of each of these permeable rights will have a significant bearing upon the enjoyment or denial of housing rights.

An accurate view of housing rights must also recognize not only the physical manifestations of a structure called 'the home', but must equally embrace the procedural, non-material aspects of housing rights which, in many respects, may be ultimately more fundamental than purely the issue of housing supply or availability. Some of the currently misguided notions about housing as a human right stem from limited perceptions of the term 'housing' itself. Thus it is not difficult to see that a literal interpretation of the phrase 'a right to adequate housing', in the absence of a more balanced comprehension of the true nature of housing, might lead to incorrect visions as to the actual contents of housing rights.

With a view to overcoming the misconceptions which lie behind arguments refuting the recognition of the human right to adequate housing, it may be useful to cursorily examine and rebut some of the central arguments against housing rights that have been put forth since April 1995, and in the process aim to answer at least some of the most frequent questions asked about these rights.

### **Housing Rights Are Too Vague To Be Defined**

It is often argued that because of the extreme diversity of housing conditions, housing policies and laws, national wealth and other factors between and within nations, that housing rights cannot be defined in a universally relevant manner and thus cannot be universally recognized human rights. The final report of the UN Special Rapporteur on Housing Rights provides guidance into how the right to adequate housing should be approached by firmly stating that this right **should not be taken to imply:**

That the State is required to build housing for the entire population;

That housing is to be provided free of charge by the State to all who request it;

That the State must necessarily fulfill all aspects of this right immediately upon assuming duties to do so;

That the State should exclusively entrust either itself or the unregulated market to ensuring this right to all; or

That this right will manifest itself in precisely the same manner in all circumstances and locations.<sup>10</sup>

Conversely, in determining the legal implications of the right to adequate housing, the Special Rapporteur has noted that a recognition of this right must be seen and interpreted,

in the most general sense, **to imply**:

That once such obligations have been formally accepted, the State will endeavour by all appropriate means possible to ensure everyone has access to housing resources adequate for health, well-being and security, consistent with other human rights;

That a claim or demand can be made upon society for the provision of or access to housing resources should a person be homeless, inadequately housed or generally incapable of acquiring the bundle of entitlements implicitly linked with housing rights;  
and

That the State, directly upon assuming legal obligations, will undertake a series of measures which indicate policy and legislative recognition of each of the constituent aspect of the right in question. [11](#)

In 1991, the UN Committee on Economic, Social and Cultural Rights adopted 'General Comment No. 4 on the Right to Adequate Housing', which provides perhaps the most authoritative legal interpretation of the right to adequate housing under international law to date. [12](#) Far from simply equating this right with the duty of the State to provide a house to any citizen asking for one on demand, General Comment No. 4 indicates that the following seven components form the core contents of the human right to adequate housing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) location; (d) habitability; (e) affordability; (f) accessibility; and (g) cultural adequacy. [13](#) Each of these have been elaborated within General Comment No. 4. According to the Committee, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather the norm should be seen as the right to live somewhere in security, peace and dignity.[14](#)

In addition to such interpretive efforts, the Committee has, on occasion, declared States parties to the Covenant to have infringed the housing rights provisions of this treaty, due in particular to State support or tolerance of the practice of mass forced evictions.[15](#) Moreover, this body now issues specific recommendations to States parties on legislative and other steps to be taken by States parties to ensure the full compliance with the housing rights norms of the Covenant and ensure the realization of these rights for the citizens to whom the State has a duty to respect, protect and fulfil.

Were the right to adequate housing not a distinct human right (fully capable of defining), it is hardly likely that it would be recognized using this terminology in a significant number of National Constitutions, that UN human rights bodies would have adopted such a substantial number of general comments, resolutions and other texts using the term 'right to adequate housing' or that civil society throughout the world would be



basing housing claims on their legally recognized human rights.

### **Are States Obligated to Build Homes for Everyone?**

Certain commentators have equated 'the human right to adequate housing' with the immediate duty of governments to substantively provide a house to anyone who requests it to do so. This literal translation of the term, however, reflects neither general State practice nor the interpretation given this right under international law. General Comment No. 4 attests:

"While the most appropriate means for achieving the full realization of the right to adequate housing will inevitably vary from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose".(para.12)

It continues:

"Measures designed to satisfy a State party's obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publically built housing".(para.14)

No State has ever or could ever hope to construct adequate housing for 100% of the population. Advocating such approaches verge on the absurd. No government, no United Nations institution, and no non-governmental organizations are advocating this approach to implementing housing rights. A much more nuanced perspective is required whereby a collective effort by all relevant actors leads as rapidly as possible to the enjoyment by all persons of an adequate home as a right. The UN Expert Group Meeting on the Human Right to Adequate Housing, held in January 1996, declared:

"Among the core areas of the State role in realizing the human right to adequate housing are provision of security of tenure, prevention (reduction) of discrimination in the housing sphere, prevention of illegal and mass evictions, elimination of homelessness and promotion of participatory processes for individuals and families in need of housing. **In specific cases, the State may have to provide direct assistance, including provision of housing units, to people affected by disasters (natural and man-made) and to the most vulnerable groups in society**".[emphasis added] [16](#)

Thus, while it is generally not the case that the State is obliged to construct housing for everyone who requests it on demand, there are laws and jurisprudence in several States indicating that under certain circumstances, the State **is legally required** to provide particular persons or groups of persons with adequate housing in an expedient manner. To argue, therefore, that housing rights obligations **never** signify the substantive provision of a home by the State to those in particular need does not entirely correspond to practical realities.

Legislation in Finland, for instance, makes it mandatory for local government authorities to provide housing resources for the severely handicapped under certain circumstances (Art. 8(2) of Act No. 380/1987). Further laws, including the Child Welfare

Act (No. 683/1983), require that local government must rectify inadequate housing conditions or, as the case may be, provide for housing when inadequate or nonexistent housing causes the need for special child welfare or constitutes a substantial hindrance to the rehabilitation of the child or the family. [17](#)

In Sweden 'the right to a home' which is modern, peaceful, well maintained and easily accessible is contained in a ten year plan for housing renovation.[18](#) The German government has stated unequivocally that "[I]n the case of homelessness, Article 1(1), in association with Articles 20(1) and 28(1) of the Basic Law on the principle of a social state based on the rule of law, gives rise to the homeless person's subjective right to be allocated accommodation enabling him to lead a dignified existence. Furthermore, the said principle obligates the state to take into account the creation of sufficient living space when shaping the economic order and making provisions for the general good". [19](#) It has also been asserted that jurisprudential considerations can be construed to reveal a right to housing, although an independent right to housing is not established pursuant to the German Basic Law. [20](#)

In the United Kingdom, the 1985 Housing Act legally requires local city councils to provide adequate accommodation to homeless families and persons in priority need. Section 63 of this law provides that "if the local housing authority have reason to believe that an applicant may be homeless and have a priority need, they shall secure that accommodation is made available for his occupation pending a decision as a result of their inquiries...". [21](#) A French law of 1990 asserts in article 1 that "the guarantee of a right to housing constitutes a duty of solidarity for the nation as a whole. Any person or family finding difficulties because of the inability of his resources to meet his needs has the right to collective assistance under conditions fixed by law that will ensure access to decent and independent housing where he can maintain himself". [22](#)

Many other examples could be also be given, including some from the developing world, but the important point here is that the primary duty of the States holding relevant legal obligations is to create conditions (legislative, administrative, regulatory, economic, social, policy and so forth) such that all residents may benefit from and enjoy in full the entitlements connected with the right to housing, within the shortest possible time-frame.

The construction of homes for an entire national population by the State is neither the intent nor obligation of States recognizing the right to housing. It must be emphasized, however, that certain governments have accepted such obligations under specific circumstances.

### **Aren't Housing Rights Only a Part of the Larger Right to an Adequate Standard of Living?**

Another common argument made against the right to housing contends that while adequate housing may well constitute a basic human need, it falls far short from comprising a basic, independent human right. The artificiality of this distinction is most

notably evident when examining the provisions found throughout international human rights law and relevant global agreements on housing and human settlements. The Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights each recognize housing rights as a distinct right, forming part of a larger right to an adequate standard of living. These formulations of housing rights have led some observers to assert that housing rights are only a part of the right to an adequate standard of living and thus do not exist as distinct norms in their own right. Such points of view, however, miss the mark.

To take one of dozens of examples, UNGA resolution 42/146 (1987) entitled 'The Realization of the Right to Adequate Housing' calls upon "all States and international organizations concerned to pay special attention to **the realization of the right to adequate housing** in carrying out measures to develop national shelter strategies and settlement improvement programmes within the framework of the Global Strategy for Shelter to the Year 2000".(emphasis added)

As far as the housing rights norms under the Covenant on Economic, Social and Cultural Rights are concerned none of the 133 States Parties to this treaty have issued reservations on the housing rights norms in article 11(1), nor have reservations been put forth under any of the other global human rights treaties recognizing housing rights to the detriment of these rights. Equally, no State Party to the Covenant has ever suggested that housing rights did not exist under this treaty, and most States have included detailed analyses of the position of this right within their countries in the States reports they submit to the UN every five years outlining the legislative and other measures taken to fulfil the rights established under the Covenant. No State party has ever refused to answer the 60 or so housing rights questions contained in the Committee on Economic, Social and Cultural Rights 'guidelines for States reports', nor denied the existence of housing rights. The contents of General Comment No. 4 have also never been refuted by States parties.

The many countries with constitutional or statutory housing rights provisions have not, of course, sought to oppose the existence of the right to adequate housing as an independent human right. It is indeed odd to oppose housing rights on the grounds that human rights law recognizes only a right to an adequate standard of living. For how could this larger right exist in the absence of housing rights? An adequate standard of living must, obviously, include enjoyment of housing-related guarantees. A homeless person with access to adequate food and adequate clothing could certainly not be considered to be enjoying a fully realized right to an adequate standard of living.

### **National Laws Do Not Recognize Housing Rights, So How Can International Law?**

Perhaps one of the least convincing arguments opposing housing rights alleges that national laws do not recognize these rights, and therefore, neither can international law. Constitutional clauses from a cross-section of countries, however, provide an indication that national laws can and often do recognize and enshrine housing rights:

Everyone has the right to enjoy a life in conformity with human dignity....These rights include, in particular, the right to adequate housing.(art. 23(3), Belgium)

All Hondurans have the right to decent housing. The State shall design and implement housing programmes of social interest. (art. 178, Honduras)

Every family has the right to enjoy decent and proper housing. The law shall establish the instruments and necessary supports to reach the said goal.(art. 4, Mexico)

Nicaraguans have the right to decent, comfortable and safe housing that guarantees familial privacy. The State shall promote the fulfillment of this right.(art. 64, Nicaragua)

Everyone shall have the right for himself and his family to a dwelling of adequate size satisfying standards of hygiene and comfort and preserving personal and family privacy.(art. 65(1), Portugal)

Each person has the right to housing. No one may be arbitrarily deprived of housing.(art. 40(1), Russia)

Everyone has the right to have access to adequate housing. The state must take reasonable progressive legislative and other measures to secure this right.(art. 26(1), South Africa)

The State shall by law, and for the common good, undertake, in co-operation with the private sector, a continuing programme of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas.(art. 13(9), Philippines)

All Spaniards have the right to enjoy decent and adequate housing.(art. 47, Spain)

Many other national Constitutions distinctly recognize the right to housing and/or the various obligations of the State within the housing sphere. In addition to those just mentioned, Ecuador, Guyana, Haiti, Iran, Lithuania, Mali, Panama, Paraguay, Peru, Sao Tome and Principe, Seychelles and Uruguay enshrine housing rights in national constitutions. Other constitutions suggest the general responsibility of the State, often phrased in terms of policy considerations, to ensure adequate housing and living conditions for all, in an environment of equality, based on the rule of law. Such formulations are found with respect to Bangladesh, Bolivia, Brazil, Burkina Faso, Colombia, Costa Rica, Dominican Republic, El Salvador, Finland, Guatemala, Korea (Rep. of), Nepal, Netherlands, Nigeria, Pakistan, Philippines, Poland, Romania, Sri Lanka, Sweden, Switzerland, Turkey, Venezuela, Viet Nam and others. [23](#)

It should also be recognized that even though the phrase 'human right to adequate housing' may not be found within national legislation, a synthesis of national laws and judicial decisions may in fact provide ample protection of citizen rights in this respect. Indeed, the following types of legislation may have a direct bearing upon the enjoyment of housing rights at the national level: (a) housing acts; (b) rent and rent restriction legislation; (c) specific housing rights legislation, including homeless person acts; (d) landlord-tenant law; (e) urban reform laws; (f) security of tenure legislation; (g) civil & criminal codes; (h) land use, zoning and agrarian laws; (i) planning laws and regulations; (j) building codes and standards; (k) laws relating to inheritance rights for women; (l) land acquisition and expropriation acts; (m) non-discrimination; (n) equality rights; (o) eviction laws; (p) development laws; and (q) environmental standards.

Although often forgotten, every nation has developed what can be deemed 'housing rights jurisprudence'; a collection of relevant laws and judicial and other decisions which can be viewed comprehensively as the legal state of housing rights within a given jurisdiction. In recognition of this point, the guidelines for States reports under article 11(1) of the Covenant on Economic, Social and Cultural Rights ask States Parties to provide specific information on eleven separate areas of legislation, each of which have a direct bearing upon the enjoyment of housing rights within these States. [24](#) The contents of these guidelines are indicative of what the Committee has called the "indispensable role" of national legislative activities in pursuit of the right to housing.

### **Are States Which Have International Legal Obligations on Housing Rights Required to Adopt ational Legislation?**

Human rights law affords States some degree of discretion as far as the adoption of national legislation as a means of implementing international standards is concerned. The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, a widely recognized tool for the interpretation of the Covenant, provide useful guidance as to whether national legislation is actually an obligation under the Covenant. [25](#) Limburg Principle 17 proclaims that article 2(1) of the Covenant requires States at the national level to use **all appropriate means**, including legislative, administrative, judicial, economic, social and educational measures, consistent with the nature of the rights in order to fulfill their obligations under the Covenant.

Governments are also obliged, under the Covenant, to take "**whatever steps are necessary**" for the purposes of the full realization of the right to adequate housing, including, but not only, the undertaking of legislative measures. General Comment No. 4 on the Right to Adequate Housing reiterates that "the role of legislative and administrative measures should not be underestimated". Therefore, although States might not be ipso facto obliged in all cases to adopt domestic legislation giving full effect to international legal obligations (as long as all other necessary steps are taken), an analysis of State practice and international legal perspectives on this issue suggest the necessity of a more subtle approach. There are certainly cases where the adoption of national

legislation would be required under international human rights law. For example, in circumstances where existing laws are manifestly inconsistent with international human rights texts including housing rights, legislation must be enacted to repeal such legislation or to create new legal rules. The Final Report of the Special Rapporteur on Housing Rights addresses this issue in several of his recommendations, suggesting that "States should seek to fully integrate the contents of General Comment No. 4 on the right to adequate housing (art. 11(1) of the Covenant on Economic, Social and Cultural Rights) into relevant national legislative and policy domains". The Special Rapporteur also recommended to States to "duly alter any domestic laws clearly incompatible with the housing rights provisions of the Covenant, and should take it fully into account in adopting any new legislation". [26](#)

The UN Secretary General, too, has noted that there is a compelling need to create new legislation and effective mechanisms geared to the prevention of forced evictions at national, regional and international levels, with a view to enforcing the implementation mechanisms of the right to adequate housing. [27](#) There are clearly advantages of pursuing housing issues through the process of housing rights and subsequently codifying this right within domestic legislation. The relative permanency of legislation as contrasted with policy decisions provides a valuable assurance that acceptance of housing as a human right will not be subject to the whims of differing political administrations. Enshrining housing rights standards in national legal frameworks may be the only manner of ensuring equitable access to adequate housing resources by disadvantaged groups and protecting the rights of economically marginalized populations.

The incorporation of housing rights provisions in law encourages governmental accountability to citizens and provides tangible substance to what are often in practice vague international commitments by a particular State. Housing rights legislation can be important incentives to ensuring equality of treatment throughout given societies, which in turn transcend purely moral or ethical claims to adequate housing by all people. It is on this basis that the Committee on Economic, Social and Cultural Rights has emphasized that "policies and legislation should not be designed to benefit already advantaged social groups at the expense of others". [28](#)

### **Is the Adoption of National Legislation Sufficient for States to Comply with Their Legal Obligations?**

The scale of housing deprivation and housing-related human rights violations throughout all corners of the world must clearly raise doubts as to the sufficiency or effectiveness of legislative strategies towards ensuring the enjoyment of the right to adequate housing by all sectors in any society. It is sometimes claimed that policy-based or socially-strategic approaches to the global housing crisis can allow more effective solutions to emerge, thereby implying that the pursuit of appropriate legal arrangements to secure the full enjoyment of housing rights will be invariably futile; at best protecting those **with** adequate housing, and doing desperately little for those **without** adequate

housing. Such distinctions, however, obscure the positive role which can, under the right circumstances, be played by law in this area.

That legislative measures alone are not sufficient to fulfill all of the obligations arising from the Covenant is clear. The Limburg Principles reinforce this point unequivocally, adding that "article 2(1) would often require legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant" (Prin. 18). The existence of housing rights laws should neither be viewed as necessarily sufficient to ensuring compliance with international housing rights obligations, nor as evidence that a particular State has no obligations regarding relevant legislation whatsoever. Rather, such laws reveal that while much has already been accomplished at the national level, far more work will be required if internationally recognized housing rights norms are to be fully implemented and enforced at the national and local levels. It is important to recall that international customary law (eg. law binding on all States) clearly provides that governments cannot rely on domestic laws as a justification for failing to fulfil international obligations.

### **Housing Rights Cannot Be Violated in the Same Way as Other Human Rights**

While the world's media and governments may not react with the same horror as they do when violations of human rights resulting in the loss of life or horrible human deprivation occur housing rights can and are violated in much the same way as other human rights, with which these rights are indivisible and interdependent. Perhaps the most obvious active violation of the right to housing is the very widespread and often ruthless practice of forced evictions. [29](#)

This practice has been repeatedly condemned as a violation of housing rights and in some instances, as a **gross** violation of human rights. Among many others, the United Nations Commission on Human Rights has asserted, for instance, in resolution 1993/77: "that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing". Such equations are by no means purely rhetorical. Since 1990 the UN's Committee on Economic, Social and Cultural Rights has declared several countries as explicit violators of the housing rights provisions under the Covenant, including the Dominican Republic, Panama, the Philippines and others.

Housing rights violations, of course, are not isolated to forced evictions. For example, a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would violate internationally recognized housing rights standards. [30](#) Similarly, acts of racial or other forms of discrimination in the housing sphere, demolition or destruction of housing as a form of punishment, failing to reform or repeal legislation inconsistent with the contents of housing rights and a range of additional actions have been declared in principle, to constitute further violations of the right to adequate housing. [31](#)

## Housing Rights Are Not Justiciable

Housing rights opponents have also argued that housing rights are not justiciable; meaning that these rights cannot be subject to judicial scrutiny or consideration and, therefore, cannot be enforced. Claiming that housing rights are not justiciable, therefore, seeks to preclude the legal dimensions of these rights and to alter them into purely policy issues. Whether examined from a practical or theoretical angle, however, such views do not correspond with actuality. Not only are housing rights cases heard every day in the court rooms of the world, but an 'international housing rights jurisprudence' has emerged and been identified during the past decade--a compilation of relevant judicial and other decisions at all levels, which in one way or another, impinge upon the human rights dimensions of the home and housing. [32](#) While it may not be possible in many jurisdictions to successfully submit complaints requesting the substantive provision of a home, numerous other core elements of housing rights are fully cable of judicial consideration.

The UN Committee on Economic, Social and Cultural Rights "views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to:

legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions;

legal procedures seeking compensation following an illegal eviction;

complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination;

allegations of any form of discrimination in the allocation and availability of access to housing; and

complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems, it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness". [33](#)

At the European level, the new European Social Charter and its procedure for collective complaints clearly envisages complaints concerning, among others, article 31 (housing rights), whereas both the European Commission and Court on Human Rights and Fundamental Freedoms have issued numerous decisions on cases linked to housing



matters.

## **Housing Rights Are Unaffordable**

While solutions to the housing rights problem spearheaded by governments form only part of any overall solution, there can be no denying the fact that the public sector spends comparatively little in the housing sphere. According to the UN Special Rapporteur on Housing Rights: "It is important to bear in mind that according to UNCHS (Habitat), about US\$ 75 billion are required to meet the needs in housing". [34](#) In terms of the global economy, this is not a great deal of money. Sachar reminds us that on the whole housing expenditure by governments of the developing world amounted to an average of 3.32 per cent in 1990, whereas by the same measurement health expenditures amounted to 6.42 per cent, with education allocations constituting nearly 15 per cent of public spending.

Securing housing rights for the most disadvantaged sectors of society will cost the State money. However, if public funds are spent wisely, efficiently and targeted to areas where deprivation is most severe, investments of this sort can achieve a great deal. Such spending need not bankrupt delicate economies. International law does not indicate that a particular sum or portion of public spending should be devoted to housing, but it does oblige governments to devote the 'maximum of available resources' towards securing economic, social and cultural rights, including housing rights. Clearly, few States have satisfied such duties.

Many of the core contents of housing rights are effectively cost-free and require few positive interventions by governments, other than a commitment to implementing human rights duties and the necessary political will. Examining housing rights obligations from the perspective of duties to respect, protect, promote and fulfil these rights, reveals that the majority of such legal requirements do not oblige States to devote substantial financial resources towards securing these rights in order to fulfil their legal obligations. The provision of security of tenure and land title, measures of land reform, revision of national legislation, instituting systems of tax credits, enforcing non-discrimination provisions, supporting appropriate incentives to the private sector, allowing community-based and non-governmental organizations to operate and organize freely and so forth will not stifle economic progress.

Above all, effective structures must be established combining positive State involvement within the housing sphere with patterns of policy, legislation and programmes fully consistent with housing rights obligations whereby funds are allocated consistent with housing demand. Even when 'available resources' are verifiably inadequate within countries, international law requires governments to ensure the widest possible enjoyment of the relevant rights under prevailing circumstances, and to demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, these minimum responsibilities. [35](#) Under

the Covenant, all States possess a **minimum core obligation** to ensure the satisfaction of essential levels of each of the rights found in this decisive legal text.

States which have housing rights obligations must move as expeditiously and effectively as possible towards the goal of realizing fully the right to housing. As an obligation, this exists independently of any increase in available resources. Any deliberately retrogressive measures affecting housing or other rights can only be justified by reference to the totality of the rights provided for in the Covenant and in the context of the full utilization of a States maximum available resources. Above all, the maximum of available resources clause requires the effective and equitable use of combined resources immediately. [36](#)

### **3. The Way Forward: Several Ways to Make Housing Rights Real**

Although the global campaign for housing rights has covered substantial ground and advanced these rights markedly over the past ten years, there can be no doubting that without added measures designed specifically to ensure the enjoyment by everyone of housing rights as human rights, the year 2000 will be witness to perhaps more homeless and inadequately housed people than ever before. The challenge of housing rights will only become a global reality as a result of innumerable actions by many millions of people as the dream of housing rights for all unfolds into the future. A lot remains to be done before housing will be universally perceived as a human rights issue per se, let alone ensuring universal human dignity through guaranteeing access to an adequate home for everyone, everywhere. In this light, several measures may bring these aspirations a bit closer to fruition.

#### **New International Standard-Setting**

Although the human right to housing finds legal substance throughout global human rights texts, there is still no single instrument which elaborates this right to an adequate extent. To a certain degree, this lack of a separate housing rights treaty has assisted in the rancorous tone of the housing rights debate this past year. Although the standard-setting process is invariably long, arduous and potentially risky, much of the groundwork for such endeavours has already been commenced.

The Expert Group Meeting on the Human Right to Adequate Housing held earlier this year concluded that "priority should be accorded to the preparation of principles and standard rules dealing with the practical implementation of the different aspects of the human right to adequate housing at the national level....there is a pressing need for additional attention to be given to the elaboration of the normative content of the right to adequate housing and to measures which should be taken to implement, or give operational effect to, the right".[37](#)

Several initiatives are underway which could ultimately lead to the creation of new international standards on the right to housing, thus consolidating and augmenting existing norms, rather than superseding them. The Special Rapporteur on Housing Rights was asked by the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine the feasibility of developing further international legislation on housing rights. As a result, the Special Rapporteur included a draft International Convention on Housing Rights in his second progress report (1994).<sup>38</sup> His final report reiterates that States should give serious consideration to the possible adoption of such a convention. While it may still be some time before the adoption of a new treaty on housing rights (if ever), a non-binding draft 'Standard Rules on Tenancy and Tenure Protection (The Right to One's Home)' is currently under consideration by the international legal and housing communities.<sup>39</sup>

Additionally, the UN Centre for Human Rights has prepared guidelines for the planning of international events which are likely to be approved in 1996.<sup>40</sup> The draft guidelines are designed to persuade States to take appropriate measures during the preparation of large-scale events such as the Olympic Games, such that the now common problem of mass forced evictions associated with such events are prevented.

Activity surrounding the development of future standards on housing rights bears witness to the widely perceived need for further standard-setting on these norms. The enormous, and in many respects, growing scale of housing denial throughout the world indicates the imperative of renewed legal action in support of housing rights. A new instrument will not duplicate existing treaties, but will rather generate a consolidation of housing rights norms, including a refinement of State obligations and individual and group entitlements. Consensus is gradually emerging for new legislation on housing rights, with calls increasingly coming from the voices of civil society.

In addition to actively promoting the implementation of housing rights, further standard-setting will also assist in providing essential conceptual and legal clarity to governments pursuing the adoption and implementation of national housing rights legislation.

### **The Appointment by the UN Commission on Human Rights of a Special Rapporteur on Housing Rights**

Despite the frequent reaffirmations of the interdependence of all human rights, there can be no disputing the fact that economic, social and cultural rights continue to languish in relative obscurity. This is particularly true concerning international monitoring and enforcement mechanisms on these rights. The UN Commission for Human Rights maintains special rapporteurs on a wide range of civil and political rights issues, however, no specific rapporteur dealing with socio-economic rights.

There are, therefore, convincing arguments for the establishment of a permanent procedure within the UN Commission on Human Rights to sustainably promote, protect

and defend the human right to adequate housing. The prevailing absence of specific mechanisms within the Commission dealing with matters relating to economic, social and cultural rights lends credence to the necessity of appointing a Special Rapporteur on Housing Rights by the Commission in 1997. A recommendation to this effect in the Habitat Agenda would surely assist in the realization of this proposition.

Such an initiative would show the resolve of the Commission towards pursuing socio-economic rights in a manner equal to and interdependent with civil and political rights, and would at least partially fill a discernable void in terms of concrete, sustained and detailed action by this leading human rights policy-making body on these rights.

### **Preventing Housing Rights Violations: Strengthening the Activities of the UN High Commissioner for Human Rights and UNCHS (Habitat)**

Both the UN High Commissioner for Human Rights and the UN Centre for Human Settlements (Habitat) have been mandated to protect the human right to adequate housing. These two important institutions have recently initiated activities in this respect. Additional promotional and protection initiatives which could be advocated by them, include:

The universal ratification of the Covenant on Economic, Social and Cultural Rights by the year 2000;

The adoption of an Optional Protocol to the Covenant availing individuals and groups the official right to complain about alleged violations of housing rights;

Sustained monitoring of the degree to which housing rights are satisfied by beneficiaries of these rights, including the publication of a bi-annual report on "The State of Housing Rights" throughout the world;

The development of specialist housing rights expertise within these two institutions with a view to developing capacities for providing technical assistance to States towards the full realization of housing rights; and

The collaborative implementation of the UNCHS (Habitat) Housing Rights Strategy, including activities more robust than those few already undertaken.

### **Critically Examining 'Enablement' as the Primary Global Housing Policy**

With the enthusiasm surrounding 'enabling' strategies as the ultimate solution to the global housing crisis, it is easy to lose sight of the fact that this policy may not, in all

cases, be fully consistent with internationally recognized housing rights standards. Enabling the poor to help themselves, while a potentially useful approach, can also generate circumstances fully justifying the withdrawal of the State from the housing domain to the detriment of the rights of citizens.

If governments or the UN are to embrace the enabling approach this must be done in a manner which corresponds to human rights standards and not interpreted as a simple means of allowing market forces to make all determinations within the housing arena. Were decision-makers to exclusively advocate enabling strategies for health or education matters (as is often the case with housing), the uproar would be deafening. If adequate housing is as important as health and education to human well-being, and is equal to these two concerns when examined from a human rights perspective, then clearly, such attitudes must not be viewed as a convenient smokescreen behind which negligent governments can hope to hide.

### **National Housing Rights Acts in All States**

Domestic laws of one distinction or another have a bearing upon the satisfaction of the core elements of housing rights in all countries. Every government has explicitly recognized to one degree or another the human rights dimensions of adequate housing; even if only in terms of protection from racial discrimination. As a result, many countries have adopted legislation designed to assist with compliance of their respective obligations under international law. Despite these steps, however, few governments could realistically claim to have removed all legislative or other obstacles preventing the fulfillment of housing rights. A State which has enshrined housing rights provisions within national laws may nevertheless show great reluctance in pursuing or even allowing the implementation of such norms, or may continue to enforce additional legislation which has the effect of nullifying any positive legislative recognition of the right to housing.

The necessity, therefore, for renewed commitments on housing rights and more refined legislative activity towards the adoption by all States of **National Housing Rights Acts** is evident. The UN Special Rapporteur on Housing Rights has suggested that "the adoption of comprehensive national housing rights acts should be positively contemplated by States" and that "as far as national legislation ... is concerned, States should, at a minimum, ensure that no violations of the right to adequate housing ... are allowed to take place". [41](#) He has also added that "in order to clarify and strengthen the right to adequate housing, all States proceeding with the elaboration of new, revised or amended national Constitutions, should give due attention to including housing rights provisions in these texts". [42](#)

Such initiatives should, among other things, lead to the amendment of national legislation when this is inconsistent with international human rights law, the consolidation of national laws into a framework fully consistent with internationally recognized housing rights and the renewed enforcement and implementation of existing

housing rights provisions. Such initiatives could be linked to the development of national shelter strategies as envisaged under the UN Global Strategy for Shelter to the Year 2000. The efforts towards the adoption of new housing rights laws by the National Campaign for Housing Rights in India, the Arab Coordinating Committee for Housing Rights in Israel and Habitat International Coalition are useful indications of how civil society can attempt to influence such initiatives.

### **Exposing and Prosecuting Housing Rights Violators**

If the world is to truly take housing rights seriously, individual governments and the international community can begin showing resolve by actively exposing and prosecuting housing rights violators. One way by which the Habitat Agenda can become a document promoting human rights, rather than side-lining them, would be the inclusion of language urging all political entities to bring violators of housing rights to justice. Monitoring and promotional mechanisms by the UN Centre on Human Settlements (within the framework of its Housing Rights Strategy) of housing rights violations and the identification of housing rights violators (individuals, public agents and international institutions) would make a significant contribution to preventing such violations. Governments cannot be relied upon to undertake such activities on their own, other than in the most extreme cases. Therefore, the role of the United Nations in halting housing rights abuses cannot be under-estimated.

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These few actions are by all means not exhaustive of the steps required to ensure the enjoyment by every woman, man and child of their legal rights to adequate housing. They attempt, however, to provide an assortment of ideas which can be pursued immediately by all sectors -- public, private and civil -- towards giving housing rights an impetus and a boost these rights so clearly require.

There are distinct benefits to approaching housing concerns through the lens of human rights, in particular when such perspectives are appropriately combined with the other key issues involved in promoting sustainable human settlements. It places a firm focus on the legal obligations (as opposed to purely policy-related decisions) of governments and the United Nations to respect, protect, promote and fulfil housing rights and raises the level of demand for adequate housing from the political, ethical, humanitarian or basic needs domains to the assertion of human rights demands grounded in law.

Housing rights standards also provide clear criteria against which actions, policies, practices and legislation can be judged and avail citizens with various legal and quasi-legal mechanisms designed to ensure the implementation of housing rights and the receipt of compensation in the event of housing rights violations. Moreover, this avenue of action creates a systematic, common and universally applicable framework - relevant to all countries - for developing appropriate legal and other measures leading to the full realization of housing rights. Ultimately, the pursuit of housing rights as human rights

promotes good governance, governmental accountability, transparency, democratic decision-making, popular participation and international cooperation.

Adequately resourced and clearly-defined initiatives by the international human rights community involving activities designed to prevent housing rights abuses, to empower, educate and train citizens about their entitlements to adequate housing as a human right and the incorporation of housing rights themes within ongoing human rights operations at the field level could go a long way towards actually protecting this fundamental human right. The ultimate success of such programmes will invariably be contingent upon more effectual and expansive views of housing rights as human rights as the dimensions of these rights attain greater levels of international consensus.

Footnotes:

1 The Universal Declaration of Human Rights (1948), adopted by UNGA resolution 217(A) on 10 December 1948. Article 25(1) states: **"Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control"**. The International Convention on the Elimination of All Forms of Racial Discrimination (1965), adopted by UNGA resolution 2106A(XX), entered into force on 4 January 1969. Article 5(e) (iii) states: **"In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:...(e) in particular...(iii) the right to housing"**. The International Convention on the Elimination of All Forms of Discrimination Against Women (1979), adopted by UNGA resolution 34/180 on 18 December 1979, entered into force on 3 September 1981. Article 14(2)(h) states: **"States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right...(h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications"**. The International Convention on the Rights of the Child (1989), adopted by UNGA resolution 44/25 on 20 November 1989, entered into force on 2 September 1990. Article 27(3) states: **"States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing"**. The Convention Relating to the Status of Refugees (1951) adopted by UNGA resolution 429(V) on 28 July 1951, entered into force on 22 April 1954. Article 21 states: **As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.**

2v See, for instance: "General Comment No. 4 on the Right to Adequate Housing (article 11(1) of the Covenant)", adopted by the UN Committee on Economic, Social and Cultural Rights at its sixth session (1991), UN doc. E/C.12/1991/4, pp. 114-120; P. Alston and G. Quinn, "The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights", in: Human Rights Quarterly, vol. 9(2), May 1987, pp. 156-229; and S. Leckie, "The UN Committee on Economic, Social and Cultural Rights and the Right to Adequate Housing: Towards an Appropriate Approach", in: Human Rights Quarterly vol. 11(4), (November 1989), pp. 522-560.

**3** For a compilation of these resolutions, see: Centre on Housing Rights and Evictions (1994) Legal Provisions on Housing Rights: International and National Approaches, COHRE, Utrecht.

**4** The latter document, the unanimously accepted Global Shelter Strategy, clearly asserts that: "the right to adequate housing is universally recognized by the community of nations...All nations without exception, have some form of obligation in the shelter sector, as exemplified by their creation of ministries or housing agencies, by their allocation of funds to the housing sector, and by their policies, programmes and projects....All citizens of all States, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them." (GLOBAL STRATEGY FOR SHELTER TO THE YEAR 2000, adopted by the UN General Assembly in resolution 43/181 on 20 December 1988 (Point 13)).

**5** As recognized earlier this year by the UN High Commissioner for Human Rights: "Adequate shelter has been recognized as a human right since the adoption of the Universal Declaration of Human Rights in 1948. Article 25 of the Declaration states that everyone has the right to an adequate standard of living and specifies housing as a component of that right. The right to housing has since been incorporated into a number of legally binding instruments with a view to ensuring the right of all persons to housing, to eliminate racial discrimination in the provision of housing and to protect the housing rights of specific groups, including women, and of vulnerable groups, such as children, refugees, displaced persons, migrants and others". (Source: Comments by the High Commissioner for Human Rights on the Habitat Agenda for the UN Conference on Human Settlements (Habitat II), (Feb. 1996, paras. 8 & 9).

**6** See, for instance: UN doc. HS/C/15/INF.7 (Towards a Housing Rights Strategy: Practical Contributions by UNCHS (Habitat) on Promoting, Ensuring and Protecting the Full Realization of the Human Right to Adequate Housing)(April, 1995).

**7** See the reports of the UN Special Rapporteur on Promoting the Realization of the Right to Adequate Housing, Justice Rajindar Sachar, as contained in: E/CN.4/Sub.2/1992/15 (Working Paper); E/CN.4/Sub.2/1993/15 (First Report); E/CN.4/Sub.2/1994/20 (Progress Report) and E/CN.4/Sub.2/1995/12 (Final report).

**8** Revised European Social Charter, opened for signature, 3 May 1996 (Strasbourg).

**9** Philip Alston (1996) "The U.S. and the Right to Housing: A Funny Thing Happened on the Way to the Forum" in European Human Rights Law Review (forthcoming).

**10** E/CN.4/Sub.2/1995/12, pp. 4-5.

**11** E/CN.4/Sub.2/1995/12, para.12

**12** E/C.12/1991/4, pp. 114-120

**13** id., para. 8.

**14** id., para. 7.

**15** For a comprehensive overview of all legal activity addressing the practice of forced evictions under international law, see: United Nations Centre on Human Rights (1996) Fact Sheet No. 25 Forced Evictions, United Nations, Geneva, and Centre on Housing Rights and Evictions (1993) Sources #3 Forced Evictions and Human Rights: A Manual for Action, Utrecht.



**16** Report, Expert Group Meeting on the Human Right to Adequate Housing, Geneva, 18-19 January 1996. See Annex III for the conclusions endorsed unanimously by the expert group

**17** Heikki Karapuu & Alan Rosas (1990) "Economic, Social and Cultural Right in Finland" in International Human Rights Norms in Domestic Law: Finnish and Polish Perspectives (Rosas, ed.), Finnish Lawyers' Publishing Company, Helsinki.

**18** B. Hubeau (1995) "Het recht op wonen als sociaal grondrecht: internationale bronnen en inbedding in de Belgische rechtsorde" in Het grondrecht op wonen: De grondwettelijke erkenning van het recht op huisvesting in Nederland en België, Maklu, Antwerp, p. 53. ("The right to housing as a constitutional social right: international sources and recognition within the Belgian legal order" in The basic right to housing: the Constitutional recognition of the right to housing in the Netherlands and Belgium).

**19** Note verbale by the Permanent Mission of Germany to the UN Centre for Human Rights, 23 February 1994, pp. 8-9.

**20** See: K. Bernd Ruthers (1993) "Ein Grundrecht auf Wohnung durch die Hintertür" in Neue Juristische Wochenschrift (2.588).

**21** For an analysis of this and other relevant housing rights in the U.K., see: Geoffrey Randall (1994) Housing Rights Guide, SHAC, London.

**22** Law 90/449 of 31 May 1990 (visant la mise en oeuvre du droit au logement ['Loi Besson'], France).

**23** Final report of the Special Rapporteur on Housing Rights, E/CN.4/Sub.2/1995/12

**24** Part (c) of the Revised guidelines regarding the form and contents of States reports to be submitted by States parties under articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights contains a broad request to States parties to provide information on eleven distinct areas of legislation viewed by the Committee as relevant to the human right to adequate housing: (c) Please provide information on the existence of any laws affecting the realization of the right to housing, including: (i) Legislation which gives substance to the right to housing in terms of defining the content of this right; (ii) Legislation such as housing acts, homeless person acts, municipal corporation acts, etc; (iii) Legislation relevant to land use, land distribution, land allocation, land zoning, land ceilings, expropriations including provisions for compensation, land planning including procedures for community participation; (iv) Legislation concerning the rights of tenants to security of tenure, to protection from eviction, to housing finance and rent control (or subsidy), housing affordability, etc; (v) Legislation concerning building codes, building regulations and standards and the provision of infrastructure; (vi) Legislation prohibiting any and all forms of discrimination in the housing sector, including groups not traditionally protected; (vii) Legislation prohibiting any form of eviction; (viii) Any legislative appeal or reform of existing laws which detracts from the fulfillment of the right to housing; (ix) Legislation restricting speculation on housing or property, particularly when such speculation has a negative impact on the fulfillment of housing rights for all sectors of society; (x) Legislative measures conferring legal title to those living in the 'illegal' sector; (xi) Legislation concerning environmental planning and health in housing and human settlements. (UN doc: E/C.12/1990/8, pp. 88-110). **25** The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights in Human Rights Quarterly, vol. 9(2), (May 1987), pp. 122-135.

**26** Final report, para. 179.

**27** UN doc. E/CN.4/1994/20 (para. 144).

**28** General Comment No. 4 (para. 11).

29 See, for instance: COHRE (1994) Forced Evictions: Violations of Human Rights No. 6, Utrecht. This report outlines instances of forced eviction in 20 countries and cases of planned evictions, which if carried out, will de-house more than 5 million persons.

30 General Comment No. 4, para. 11.

31 See, for instance: Working Paper and First Progress Report of the UN Special Rapporteur on Promoting the Realization of the Right to Adequate Housing (UN docs. E/CN.4/Sub.2/1992/15 and E/CN.4/Sub.2/1993/15).

32 Scott Leckie (1995) "The Justiciability of Housing Rights" in SIM Special No. 18 Proceedings of the Conference on an Optional Protocol to the Covenant on Economic, Social and Cultural Rights, Netherlands Institute for Human Rights, Utrecht, pp. 35-77.

33 Para. 17, General Comment No. 4.

34 UN doc. E/CN.4/Sub.2/1995/12, (Final report), p. 5.

35 General Comment No. 3 (1990): the nature of States parties' obligations (art. 2, para. 1 of the Covenant), UN doc. E/C.12/1990/8, pp. 83-87.

36 id

37 Report of the Expert Group Meeting on the Human Rights to Adequate Housing (Geneva, 18-19 January 1996), organized jointly by the UN Centre for Human Rights and the UN Centre for Human Settlements (Habitat).

38 E/CN.4/Sub.2/1994/20, pp. 27-35 (Draft International Convention on Housing Rights). See also: Scott Leckie (1994) Towards an International Convention on Housing Rights: Options at Habitat II, American Society of International Law, Washington DC.

39 See: International Union of Tenants (1995) IUT Papers No. 1, IUT, Stockholm.

40 Guidelines on international events and forced evictions (Report of the Secretary-General), E/CN.4/Sub.2/1995/13.

41 E/CN.4/Sub.2/1995/12, paras. 162 & 165.

42 E/CN.4/Sub.2/1995/12, para. 164.

## **Occasional Paper 21 - HUMAN DEVELOPMENT AND SHELTER: A HUMAN RIGHTS PERSPECTIVE**

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### **Appendices**

**Annex I: Content of the Right to Development**

**[Annex II: A Synthesis of State Obligations Related to Housing Rights](#)**

**[Annex III: CBO's and NGO's Working for Housing Rights](#)**

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## Annex I: Content of the Right to Development

### 1. The right to development:

- is an "inalienable" "human right" of "every human person" and "all peoples" (Article I, DHRD);
- "to exercise" "full and complete sovereignty over all their natural wealth and resources" (Preamble, DHRD);
- in pursuit of "their economic, social and cultural development" (Preamble, DHRD).

### 2. Development is defined as:

- "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals" (Preamble, DHRD);
- "in which all human rights and fundamental freedoms can be fully realized" (Article 1(1), DHRD).

### 3. Component rights of the right to development: Most human rights have several components and/or related rights. The component rights of the human right to development include:

Rights of Participation. Every person and all peoples are entitled to "active, free and meaningful participation in development" (Preamble, DHRD) and as an "active participant" (Article 2, DHRD) "contribute to, and enjoy economic, social, cultural and political development" (Article 1(1), DHRD).

The Right to be "the central subject of development (Article 20, DHRD) which "aims at the constant improvement" of human well-being (Preamble, DHRD). This constitutes the right to people-centered, human development where people and their well-being come first, ahead of all other developmental objectives and priorities.

The Right to "fair distribution" of the benefits from development (Preamble, DHRD).

The Right to nondiscrimination in development" without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Preamble, DHRD).

The Right to Self-Determination. "The human right to development also implies the full realization of the right of peoples to self-determination, which includes...their inalienable right to full sovereignty over all their natural wealth and resources"

(Article 1(2), DHRD).

The Right to "the free and complete fulfillment of the human being" with "full respect" for "human rights and fundamental freedoms" (Article 1(2), DHRD).

The Right against trade-offs. Every human person and all peoples have the right to "the implementation, promotion and protection" of "all human rights and fundamental freedoms", "civil, political, economic, social and cultural". (Article 6(2) and Preamble, DHRD). "The promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms". "All human rights and fundamental freedoms are indivisible and interdependent" (Preamble, DHRD).

### **Obligations of States (Individual)**

The Declaration on the Right to Development specifies several obligations of States:

1. The Duty "to ensure full exercise and progressive enhancement of the right to development"

(Article 10, DHRD) which includes:

\* "the right and duty to formulate appropriate national development policies" (Article 2(3), DHRD);

\* the duty to "undertake, at the national level, all necessary measures for the realization of the right to development" (Article 8(1), DHRD);

\* the duty "for the creation of national conditions favourable to the realization of the right to development" (Article 3(1), DHRD). The World Summit on Social Development refers to this as the commitment to create "enabling environments".

2. The Duty to ensure "active free and meaningful participation" (Article 2(3), DHRD) and to

"encourage popular participation in all spheres as an important factor in development" (Article 8(2), DHRD).

3. The Duty "to eliminate the massive and flagrant violations of the human rights of people and human beings" (Article 5, DHRD) and to eradicate "all social injustices" (Article 8(1), DHRD).

4. The Duty "to eliminate obstacles to development resulting from failure to observe civil and political rights as well as economic, social and cultural rights" (Article 6(3), DHRD) and the related duty that "the promotion of, respect for, and enjoyment of, certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms" (Preamble, DHRD).

5. The Duty of "promoting, encouraging and strengthening universal respect" for all human rights and fundamental freedoms (Article 6(1), DHRD).

6. The Duty not to discriminate on basis of "race, sex, language or religion" (Article 8(1), DHRD).

7. The Duty to "ensure that the resources released by effective disarmament measures are used for comprehensive development" (Article 7, DHRD).

### **Obligations of States (Collective)**

Several of the above obligations of individual States apply as well to States, collectively. The Declaration on the Right to Development also specifies several collective duties of States:

1. The Duty to cooperate:
  - \* "in ensuring development and eliminating obstacles to development" (Article 3(3), DHRD);
  - \* "to eliminate the massive and flagrant violations" of human rights (Article 5, DHRD);
  - \* to promote "universal respect for and observance of, all human rights and fundamental freedoms for all" (Article 6(1), DHRD).

2. The Duty of "full respect for the principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations" (Article 3(2), DHRD).

3. The Duty "to take steps, individually and collectively to formulate international development policies with a view to facilitating the full realization of the right to development" (Article 4(1) and Article 10, DHRD).

4. The Duty to "promote the establishment" "of international peace and security and, to that end" "to achieve general and complete disarmament" and to use the resources so released "for comprehensive development" (Article 7, DHRD). It is important to note that the United Nations system represents the main mechanism through which States can fulfill their above collective obligations. It is also important to note that Article 10 of the Declaration calling for steps to be taken at national and international levels "to ensure the full exercise and progressive enhancement of the right to development" and Article 4(1) calling for the formulation of international development policies to facilitate "the full realization of the right to development", while addressed primarily to States, also implicate the UN and its specialized agencies.

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## **Annex II: A Synthesis of State Obligations Related to Housing Rights**

A synthesis of the jurisprudence of the Committee on Economic, Social and Cultural Rights, the European Commission and Court on Human Rights, the European Committee of Independent Experts and the contents of UN resolutions and legal texts addressing housing rights issues, set within the framework of the commonly accepted methodology of the four 'layers of obligations' (**e.g. to respect, to protect, to promote and to fulfil**) of States in terms of the right to adequate housing reveals much of the substance and core content of this right as recognized under international law. These can be divided into 34 discernable State obligations:

### **The Obligation to Respect Housing Rights [43](#)**

The right to popular participation throughout the housing sphere, including the right of citizens to influence and decide upon any housing laws or policies;

The rights to organize, assemble and association, particularly with respect to tenants organizations, community-based organizations and housing cooperatives;  
Legal protection from forced or threatened eviction or house demolitions;

The right to equality of treatment, particularly in terms of the allocation of housing resources, access to housing finance and resident permits;

The right to privacy, including the protection from arbitrary searches of residences;

The right to be free from racial discrimination, particularly in the housing allocation process;

Tolerance and promotion of housing-related freedoms, including the right to self-help housing initiatives;

Ensuring respect for cultural attributes of traditional housing construction methods, the protection of housing of historical significance;

Refraining from coercive measures forcing another State to violate housing rights.

### **The Obligation to Protect Housing Rights**

Immediate steps must be taken by States to ensure that violations of housing rights standards by the State and its agents are, to the maximum extent, prevented from occurring;

Additional immediate steps must be taken to ensure that violations of housing rights by third parties, including protection from abuse by landlords, are prevented;

The availability of impartial legal remedies in cases of alleged violations of housing rights

The comprehensive provision of security of tenure throughout all housing sectors, applicable to all citizens;

Active measures designed to protect all persons against racial or other forms of discrimination, harassment and the withdrawal of services;

The affordability of housing for all income groups in society should be ensured. In this

regard, housing costs should never be allowed to rise to levels preventing dwellers from accessing and satisfying other basic needs;

The regulation of rent levels and provision of housing subsidies should be undertaken in an appropriate manner, with a view to ensuring compliance with the affordability principle;

The overall habitability and physical safety of dwellers should be actively protected and adequately stimulated, with particular regard to protecting dwellers from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors;

Housing should be built at locations in near proximity to employment options, schools, health care centers and open spaces. Conversely, housing should not be built in dangerous areas where threats to environmental health and hygiene exist;

States must respond constructively to housing rights violations, wherever they occur, both domestically and in other countries.

### **The Obligation to Promote Housing Rights**

Comprehensive legislative and policy review of all laws, regulations or other directives

having any negatively bearing on the fulfillment of housing rights should be undertaken

without delay upon acquiring housing rights obligations;

Both the legislative and policy recognition of the right to adequate housing should be established;

Targeted policies towards ensuring the full realization of housing rights in the shortest possible time frame for all sectors of society should be carried out;

Establishing benchmarks designed to monitor societal housing needs, including the use

of appropriate indicators towards this end should be developed and applied;

The development and implementation of a national housing strategy is a fundamental element of the promotion function;

Priority attention and targeted strategies towards satisfying the housing needs of disadvantaged groups, including the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters and people living in disaster-prone areas are required;



Ensuring the full accessibility to housing resources by all ethnic, racial, national, minority or other social groups.

### **The Obligation to Fulfil Housing Rights**

The devotion of a reasonable proportion of public expenditure on housing, consistent with social housing requirements and international, national and local legal duties;

Housing subsidies for tenants and first-time home buyers, as well as the establishment of effective housing finance measures for low-income groups form a crucial aspect of this obligation;

The construction and maintenance of public housing resources by public agencies, as well as the financing by the State of such activities;

The provision by the State of public services, including infrastructure, water, electricity, sanitation, heating, sewage, draining, roads, health care facilities and emergency services;

Active measures should be undertaken by the State in support of those persons, families and groups unable to satisfy their housing needs by individual efforts;

The promotion of natural and/or indigenous building materials for use in the housing process;

A proportion of overseas developmental assistance by the industrialized countries to other States should be provided towards assisting developing countries in satisfying housing rights obligations;

The provision of adequate housing accommodation for all refugees and asylum seekers within a State's borders forms a fundamental requirement of the obligation to fulfil.

### **Annex III: CBO's and NGO's Working for Housing Rights**

Arab Coordinating Committee on Housing Rights (ACCHRI), PO Box 215, Nazareth 16101, Israel, tel: 972.6.561923, fax: 972.6.564934

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Centre on Housing Rights and Evictions (COHRE), 8 Gustav Moynier, 1202 Geneva,  
Switzerland, tel: 41.22.7317327/7388167, fax: 41.22.7388167.

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Fedevivienda, Avda. (Calle) 40, No. 15-69, AA 57059, Bogota, Colombia, tel:  
57.1.2880711

Habitat International Coalition (HIC), Cordobanes No. 24, Col. San Jose Insurgentes,  
Mexico D.F. 03900, Mexico, tel: 52.5.6516807/ fax. 52.5.5935194

Habitat et Participation: 1, Place du Levant, 1348 Louvain-la-Neuve, Belgium, tel:  
32.10.472314/ fax: 32.10.473043

Mazingira Institute, PO Box 14564, Nairobi, Kenya, tel: 254.2.470666/ fax: 254.2.740524

National Coalition for the Homeless (NCH): 1621 Connecticut Ave, NW, 4th Floor,  
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National Campaign for Housing Rights (NCHR), Flat No. 117, Bldg. No. 8, 1st Floor, Dr.  
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4070623, Fax No. 91-22-2044223 c/o NCHR;

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1.416.3661711/ fax: 1.416.3663876

YUVA: No.8 Ground Floor, 33L, Mughbat Cross Lane, Bombay, India 400004, Tel. No.  
91-22-3889811.

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43 COHRE (1994) Sources No. 4: Legal Provisions on Housing Rights: International and National Approaches, Utrecht, pp. 65-67

**Occasional Paper 21 - HUMAN DEVELOPMENT AND SHELTER: A HUMAN RIGHTS PERSPECTIVE**

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43 COHRE (1994) Sources No. 4: Legal Provisions on Housing Rights: International and National Approaches, Utrecht, pp. 65-67

**Occasional Paper 21 - HUMAN DEVELOPMENT AND SHELTER: A HUMAN RIGHTS PERSPECTIVE**

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## Appendices

## **Annex I: Content of the Right to Development**

[Annex II: A Synthesis of State Obligations Related to Housing Rights](#)

[Annex III: CBO's and NGO's Working for Housing Rights](#)

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## **Annex I: Content of the Right to Development**

### 1. The right to development:

- is an "inalienable" "human right" of "every human person" and "all peoples" (Article I, DHRD);
- "to exercise" "full and complete sovereignty over all their natural wealth and resources" (Preamble, DHRD);
- in pursuit of "their economic, social and cultural development" (Preamble, DHRD).

### 2. Development is defined as:

- "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals" (Preamble, DHRD);
- "in which all human rights and fundamental freedoms can be fully realized" (Article 1(1), DHRD).

### 3. Component rights of the right to development: Most human rights have several components and/or related rights. The component rights of the human right to development include:

Rights of Participation. Every person and all peoples are entitled to "active, free and meaningful participation in development" (Preamble, DHRD) and as an "active participant" (Article 2, DHRD) "contribute to, and enjoy economic, social, cultural and political development" (Article 1(1), DHRD).

The Right to be "the central subject of development (Article 20, DHRD) which "aims at the constant improvement" of human well-being (Preamble, DHRD). This constitutes the right to people-centered, human development where people and their well-being come first, ahead of all other developmental objectives and priorities.

The Right to "fair distribution" of the benefits from development (Preamble, DHRD).

The Right to nondiscrimination in development"without distinction of any kind such as  
as  
race, colour, sex, language, religion, political or other opinion, national or social origin,  
property, birth or other status" (Preamble, DHRD).

The Right to Self-Determination. "The human right to development also implies the full realization of the right of peoples to self-determination, which includes...their inalienable right to full sovereignty over all their natural wealth and resources" (Article 1(2), DHRD).

The Right to "the free and complete fulfillment of the human being" with "full respect" for "human rights and fundamental freedoms" (Article 1(2), DHRD).

The Right against trade-offs. Every human person and all peoples have the right to "the implementation, promotion and protection" of "all human rights and fundamental freedoms", "civil, political, economic, social and cultural". (Article 6(2) and Preamble, DHRD). "The promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms". "All human rights and fundamental freedoms are indivisible and interdependent" (Preamble, DHRD).

### **Obligations of States (Individual)**

The Declaration on the Right to Development specifies several obligations of States:

1. The Duty "to ensure full exercise and progressive enhancement of the right to development"

(Article 10, DHRD) which includes:

\* "the right and duty to formulate appropriate national development policies" (Article 2(3), DHRD);

\* the duty to "undertake, at the national level, all necessary measures for the realization of the right to development" (Article 8(1), DHRD);

\* the duty "for the creation of national conditions favourable to the realization of the right to development" (Article 3(1), DHRD). The World Summit on Social Development refers to this as the commitment to create "enabling environments".

2. The Duty to ensure "active free and meaningful participation" (Article 2(3), DHRD) and to

"encourage popular participation in all spheres as an important factor in development" (Article 8(2), DHRD).

3. The Duty "to eliminate the massive and flagrant violations of the human rights of people and human beings" (Article 5, DHRD) and to eradicate "all social injustices" (Article 8(1), DHRD).

4. The Duty "to eliminate obstacles to development resulting from failure to observe civil and political rights as well as economic, social and cultural rights" (Article 6(3), DHRD) and the related duty that "the promotion of, respect for, and enjoyment of, certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms" (Preamble, DHRD).

5. The Duty of "promoting, encouraging and strengthening universal respect" for all human rights and fundamental freedoms (Article 6(1), DHRD).

6. The Duty not to discriminate on basis of "race, sex, language or religion" (Article 8(1), DHRD).

7. The Duty to "ensure that the resources released by effective disarmament measures are used for comprehensive development" (Article 7, DHRD).

### **Obligations of States (Collective)**

Several of the above obligations of individual States apply as well to States, collectively. The Declaration on the Right to Development also specifies several collective duties of States:

1. The Duty to cooperate:
  - \* "in ensuring development and eliminating obstacles to development" (Article 3(3), DHRD);
  - \* "to eliminate the massive and flagrant violations" of human rights (Article 5, DHRD);

\* to promote "universal respect for and observance of, all human rights and fundamental freedoms for all" (Article 6(1), DHRD).

2. The Duty of "full respect for the principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations" (Article 3(2), DHRD).

3. The Duty "to take steps, individually and collectively to formulate international development policies with a view to facilitating the full realization of the right to development" (Article 4(1) and Article 10, DHRD).

4. The Duty to "promote the establishment" "of international peace and security and, to that end" "to achieve general and complete disarmament" and to use the resources so released "for comprehensive development" (Article 7, DHRD). It is important to note that the United Nations system represents the main mechanism through which States can fulfill their above collective obligations. It is also important to note that Article 10 of the Declaration calling for steps to be taken at national and international levels "to ensure the full exercise and progressive enhancement of the right to development" and Article 4(1) calling for the formulation of international development policies to facilitate "the full realization of the right to development", while addressed primarily to States, also implicate the UN and its specialized agencies.

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## **Annex II: A Synthesis of State Obligations Related to Housing Rights**

A synthesis of the jurisprudence of the Committee on Economic, Social and Cultural Rights, the European Commission and Court on Human Rights, the European Committee of Independent Experts and the contents of UN resolutions and legal texts addressing housing rights issues, set within the framework of the commonly accepted methodology of the four 'layers of obligations' (**e.g. to respect, to protect, to promote and to fulfil**) of States in terms of the right to adequate housing reveals much of the substance and core content of this right as recognized under international law. These can be divided into 34

discernable State obligations:

### **The Obligation to Respect Housing Rights [43](#)**

The right to popular participation throughout the housing sphere, including the right of citizens to influence and decide upon any housing laws or policies;

The rights to organize, assemble and association, particularly with respect to tenants organizations, community-based organizations and housing cooperatives;  
Legal protection from forced or threatened eviction or house demolitions;

The right to equality of treatment, particularly in terms of the allocation of housing resources, access to housing finance and resident permits;

The right to privacy, including the protection from arbitrary searches of residences;

The right to be free from racial discrimination, particularly in the housing allocation process;

Tolerance and promotion of housing-related freedoms, including the right to self-help housing initiatives;

Ensuring respect for cultural attributes of traditional housing construction methods, the protection of housing of historical significance;

Refraining from coercive measures forcing another State to violate housing rights.

### **The Obligation to Protect Housing Rights**

Immediate steps must be taken by States to ensure that violations of housing rights standards by the State and its agents are, to the maximum extent, prevented from occurring;

Additional immediate steps must be taken to ensure that violations of housing rights by third parties, including protection from abuse by landlords, are prevented;

The availability of impartial legal remedies in cases of alleged violations of housing rights

The comprehensive provision of security of tenure throughout all housing sectors, applicable to all citizens;

Active measures designed to protect all persons against racial or other forms of discrimination, harassment and the withdrawal of services;

The affordability of housing for all income groups in society should be ensured. In this regard, housing costs should never be allowed to rise to levels preventing dwellers from accessing and satisfying other basic needs;

The regulation of rent levels and provision of housing subsidies should be undertaken in an appropriate manner, with a view to ensuring compliance with the affordability principle;

The overall habitability and physical safety of dwellers should be actively protected and adequately stimulated, with particular regard to protecting dwellers from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors;

Housing should be built at locations in near proximity to employment options, schools, health care centers and open spaces. Conversely, housing should not be built in dangerous areas where threats to environmental health and hygiene exist;

States must respond constructively to housing rights violations, wherever they occur, both domestically and in other countries.

### **The Obligation to Promote Housing Rights**

Comprehensive legislative and policy review of all laws, regulations or other directives

having any negatively bearing on the fulfillment of housing rights should be undertaken

without delay upon acquiring housing rights obligations;

Both the legislative and policy recognition of the right to adequate housing should be established;

Targeted policies towards ensuring the full realization of housing rights in the shortest possible time frame for all sectors of society should be carried out;

Establishing benchmarks designed to monitor societal housing needs, including the use of appropriate indicators towards this end should be developed and applied;

The development and implementation of a national housing strategy is a fundamental element of the promotion function;

Priority attention and targeted strategies towards satisfying the housing needs of disadvantaged groups, including the elderly, children, the physically disabled, the



terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters and people living in disaster-prone areas are required;

Ensuring the full accessibility to housing resources by all ethnic, racial, national, minority or other social groups.

### **The Obligation to Fulfil Housing Rights**

The devotion of a reasonable proportion of public expenditure on housing, consistent with social housing requirements and international, national and local legal duties;

Housing subsidies for tenants and first-time home buyers, as well as the establishment of effective housing finance measures for low-income groups form a crucial aspect of this obligation;

The construction and maintenance of public housing resources by public agencies, as well as the financing by the State of such activities;

The provision by the State of public services, including infrastructure, water, electricity, sanitation, heating, sewage, draining, roads, health care facilities and emergency services;

Active measures should be undertaken by the State in support of those persons, families and groups unable to satisfy their housing needs by individual efforts;

The promotion of natural and/or indigenous building materials for use in the housing process;

A proportion of overseas developmental assistance by the industrialized countries to other States should be provided towards assisting developing countries in satisfying housing rights obligations;

The provision of adequate housing accommodation for all refugees and asylum seekers within a State's borders forms a fundamental requirement of the obligation to fulfil.

### **Annex III: CBO's and NGO's Working for Housing Rights**

Arab Coordinating Committee on Housing Rights (ACCHRI), PO Box 215, Nazareth 16101, Israel, tel: 972.6.561923, fax: 972.6.564934

Asian Coalition for Housing Rights (ACHR), PO Box 24-74 Klongchan, Bangkok, Bangkok 10240, Thailand, tel: 66.2.5380919/ fax: 66.2.5399950

Committee for the Right to Housing, Co-ordination Centre, C/o Bandra East Community Centre, 341-A, Siddharth Colony, Bandra (E), Bombay, 400051, India

Centre on Equality Rights in Accommodation (CERA), 517 College St., Suite 408, Toronto M6G 1A8, Canada

Centre on Housing Rights and Evictions (COHRE), 8 Gustav Moynier, 1202 Geneva, Switzerland, tel: 41.22.7317327/7388167, fax: 41.22.7388167.

ENDA, Rue Carnot 54, Dakar 3370, Senegal, tel: 221.220942/ fax: 221.222695

FEANTSA: 1 rue Defacqz/17, B-1050 Brussels 1, Belgium

Fedevivienda, Avda. (Calle) 40, No. 15-69, AA 57059, Bogota, Colombia, tel: 57.1.2880711

Habitat International Coalition (HIC), Cordobanes No. 24, Col. San Jose Insurgentes, Mexico D.F. 03900, Mexico, tel: 52.5.6516807/ fax: 52.5.5935194

Habitat et Participation: 1, Place du Levant, 1348 Louvain-la-Neuve, Belgium, tel: 32.10.472314/ fax: 32.10.473043

Mazingira Institute, PO Box 14564, Nairobi, Kenya, tel: 254.2.470666/ fax: 254.2.740524

National Coalition for the Homeless (NCH): 1621 Connecticut Ave, NW, 4th Floor, Washington DC 20009, USA;

National Campaign for Housing Rights (NCHR), Flat No. 117, Bldg. No. 8, 1st Floor, Dr. Baliga Nagar, Jasmine Mill Road, Mahim (East) Bombay 400 017, India; Tel. No. 91-22-4070623, Fax No. 91-22-2044223 c/o NCHR;

Rooftops International, 2 Berkeley St., Suite 207, Toronto M5A 2W3, Canada, tel: 1.416.3661711/ fax: 1.416.3663876

YUVA: No.8 Ground Floor, 33L, Mughbat Cross Lane, Bombay, India 400004, Tel. No. 91-22-3889811.