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HOUSING RIGHTS

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1. Introduction

Though widely recognized throughout international human rights law, few universal rights are enjoyed less universally than housing rights. While housing rights have long been a firm feature of international human rights law, with all national legal systems recognising at least some of the core elements of this composite set of guarantees, the recognition of these aspirations as legal rights forms only part of far more complex series of factors that may or may not lead to the full satisfaction of housing rights by 'everyone' - as stipulated by the Universal Declaration of Human Rights. While accurate figures on the global scale of non-enjoyment of housing rights are notoriously unavailable, the UN Center on Human Settlements (Habitat) regularly refers to one billion persons as inadequately housed.

A partial explanation for these still wide gaps between law and reality can be explained by continuing misunderstandings concerning the implications of housing rights once these rights are recognised by governments. Questions continue to be posed as to the contents and ultimate scope of housing rights, and answers to these, of course, will have diverse ramifications for governments as rights protectors, for NGO's as rights advocates and for citizens as the exercisers of these rights. Some of the more common questions posed about housing rights include:

- Can housing rights be defined to be classified as enforceable human rights?
- How absolute is the guarantee provided by housing rights?
- Are states obliged to build homes for everyone once they accept housing rights?
- Are housing rights recognised under national laws?
- Are states that have accepted housing rights required to adopt national legislation?
- Can housing rights be violated in the same way as other human rights?
- Are housing rights affordable?
- Are housing rights really rights or merely goals or aspirations?

Clarifying such queries, of course, is of great importance in deciphering the scope of housing rights and in determining who has to do what to ensure that everyone can possess the components of this right. 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 development. It places a firm focus on the legal obligations (in contrast to purely policy-related decisions) of governments to respect, protect, promote and fulfil housing rights and raises the level of demand for adequate housing by inadequately persons, families and communities from the political, ethical, humanitarian or basic needs spheres to the assertion of human rights demands grounded in law and justice.

Housing rights also provide clear criteria against which actions, policies, practices and legislation can be judged and provide citizens with various legal procedures and mechanisms designed to ensure the implementation of housing rights and the receipt of compensation in the event of housing rights violations. Moreover, a systematic, common and universally applicable framework - relevant to all countries - for developing appropriate legal and other measures leading to the full realisation of housing rights emerges when housing is placed within a human rights framework. Ultimately, the pursuit of housing rights as human rights promotes good

governance, governmental accountability, transparency, democratic decision-making, popular participation and international co-operation.

Adequately resourced and clearly-defined initiatives by civil society, States, the international 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 strengthening of housing rights themes within ongoing human rights operations at the field level - such as in Kosovo and East Timor - could go a long way towards actually protecting this fundamental human right. The ultimate success of such programmes will invariably depend upon more effectual and expansive views of housing rights as human rights as the dimensions of these rights attain greater levels of international consensus.¹

This paper will examine a wide cross-section of issues relating to housing rights. In particular, it will outline the major developments made in law, policy and practice during the 1990s on these rights and will identify those areas still requiring attention. It will also address the how housing rights fit into larger efforts towards human development, as well as how these rights can contribute promoting accountability and transparency by governments around the world.

2. The International Law on Housing Rights

To live in a home, and to have one's own place to reside with peace, security and dignity in place, 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 humanity based on universal principles, has led the community of nations to recognise adequate housing as a basic human right. 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 Universal Declaration in 1948, the human right to adequate housing has been subsequently reaffirmed and considerably strengthened.

Beyond the Universal Declaration, rights to housing are expressed in the International Covenant on Economic, Social and Cultural Rights (art. 11(1)), the Convention on the Elimination of All Forms of Racial Discrimination (art. 5(e)(iii)), the Convention on the Rights of the Child (art. 27(3)); the Convention on the Elimination of All Forms of Discrimination Against Women (art. 14(2)), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 43(1)(d)), and ILO Recommendation No. 115 on Workers' Housing (see annex 1). The International Covenant on Economic, Social and Cultural Rights (CESCR) entered into force on 3 January 1976. While international human rights law widely recognises various manifestations of housing rights, article 11(1) of the CESCR contains perhaps the most significant international legal source of the right to adequate housing:

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.

¹ As with all human rights, the right to adequate housing is comprised of a web of intertwined obligations and entitlements which, when combined with one another, constitute the full right. Because of the multi-dimensional and composite nature of the rights affecting where and how people live, this paper will use the terms 'the right to housing' and 'housing rights' interchangeably

*The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent.*²

As far as the international monitoring of the Covenant is concerned, the UN Committee on Economic, Social and Cultural Rights has identified several States parties to the CESCR which have violated the housing rights provisions of article 11(1), which gives an indication of both the seriousness with which the Committee views this right, as well as existence of sufficiently precise norms in the Covenant to enable the Committee to make such pronouncements. The Committee has specifically critically addressed housing rights issues in States parties relating to: (a) the rights of tenants; (b) the universal provision of security of tenure; (c) homelessness; (d) the need to construct low-income housing; (e) the lack of domestic remedies for housing rights violations; (f) land regularization; (g) the prevalence of inadequate living conditions and service availability; (h) the need to establish a national housing commission; (i) protection from discrimination within the housing sphere; and (j) expropriation for social housing purposes.

Further indications of the growing stature of housing rights under international law include the work of the United Nations Special Rapporteur on Housing Rights who presented four reports (1992-1995) to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities between³ and the publication of a 'Housing Rights Strategy' by the United Nations Centre on Human Settlements (UNCHS (Habitat)) in April 1995.⁴ Moreover, the UN convened the World Summit on Human Settlements in June 1996, where housing rights issues dominated the agenda and discussions. The recently established 'UN Housing Rights Programme (UNHRP)', a joint programme between the UNCHS (Habitat) and the UN Office of the High Commissioner for Human Rights will seek to provide overall UN-wide guidance on housing rights issues.⁵

Throughout the past decade resolutions recognising and reaffirming the right to adequate housing have been adopted by the General Assembly, the Economic and Social Council, the Commission on Human Rights, the UN Commission on Human Settlements and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, each of which has given added weight to the primacy of housing rights.⁶ The right to adequate housing has also

² 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 Reports of the UN Special Rapporteur on Housing Rights, Justice Rajindar Sachar, include: Final Report (UN doc. E/CN.4/Sub.2/1995/12); Second Progress Report (UN doc. E/CN.4/Sub.2/1994/20); First Progress Report (UN doc. E/CN.4/Sub.2/1993/15); and Working Paper on the Right to Adequate Housing (UN doc. E/CN.4/Sub.2/1992/15).

⁴ Towards a Housing Rights Strategy: Practical Contributions by UNCHS (Habitat) on Promoting and Protecting the Full Realization of the Human Right to Adequate Housing (UN doc. HS/C/15/INF.7).

⁵ HS/C/17/INF.6 (30 march 1999).

⁶ Centre on Housing Rights and Evictions (2nd ed., 1999) Legal Provisions on Housing Rights: International and National Approaches, Geneva.

been extensively recognised 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. Housing rights provisions have been included within The Habitat Agenda (1996), 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. The UN Global Shelter Strategy captures the essence of housing rights in the following terms:

the right to adequate housing is universally recognised 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.⁷

3. National Constitutions and Housing Rights

National constitutions from all regions of the world and representing every major legal system, culture, level of development, religion and economic system specifically address State obligations relating to housing. Close to half of the world's Constitutions refer to general obligations within the housing sphere or specifically to the right to adequate housing. If human rights linked to and indispensable for the enjoyment of housing rights are considered (eg. the right to freedom of movement and to choose one's residence, the right to privacy and respect for the home, the right to equal treatment under the law, the right to human dignity, the right to security of the person, certain formulations of the right to property or the peaceful enjoyment of possessions, etc.), the overwhelming majority of constitutions make reference, at least implicitly, to housing rights.

Constitutional clauses from a cross-section of countries reveal that national laws can and often do recognise and enshrine housing rights:

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)

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)

⁷ GLOBAL STRATEGY FOR SHELTER TO THE YEAR 2000, adopted by the UN General Assembly in resolution 43/181 on 20 December 1988 (Point 13).

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 fulfilment 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 Federation)

The Constitutions of Armenia, Congo, Ecuador, Finland, Guyana, Haiti, Iran, Lithuania, Mali, Panama, Paraguay, Peru, Sao Tome and Principe, Seychelles, Slovenia, Uruguay and others also enshrine housing rights. 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, Nepal, Netherlands, Nigeria, Pakistan, Philippines, Poland, Romania, Sri Lanka, Sweden, Switzerland, Turkey, Venezuela, Viet Nam and others.

It should also be recognised 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 considerable 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: housing acts; rent and rent restriction legislation; specific housing rights legislation, including homeless person acts; landlord-tenant law; urban reform laws; security of tenure legislation; civil & criminal codes; land use, zoning and agrarian laws; planning laws and regulations; building codes and standards; laws relating to inheritance rights for women; land acquisition and expropriation acts; non-discrimination; equality rights; eviction laws; development laws; and environmental standards. (see sections 14 and 20 for further discussion of national housing rights laws).

4. To Legislate or Not to Legislate?

The question of whether States possessing economic, social and cultural rights ESC rights obligations, including those linked to housing rights, are required by virtue of these obligations to adopt national legislation to give effect to these obligations is of vital importance. 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 recognised tool for the interpretation of the Covenant, provide useful guidance as to whether national legislation is actually an obligation under the Covenant.⁸ Limburg Principle

⁸ 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.

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 fulfil their obligations under the Covenant.

Governments are also obliged, under the Covenant, to take *whatever steps are necessary* for the purposes of the full realisation 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 nuanced 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".⁹ The Special Rapporteur has also suggested 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".¹⁰

The UN Secretary General, too, has noted that there is a 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.¹¹ 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

9 Final report, para. 179.

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

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

or ethical claims to adequate housing by all people. It is on this basis that the Committee on Economic, Social and Cultural Rights has emphasised that "policies and legislation should not be designed to benefit already advantaged social groups at the expense of others".¹²

5. Statisticians as Human Rights Defenders

That the collection, disaggregation and analysis of social and economic statistics and indicators is fundamental to the development of effective economic and social policies is widely agreed. At the same time, however, those active in the pursuit of identifying and developing economic and social statistics perhaps rarely see themselves as essential - and in many respects indispensable - servants in the parallel pursuit of the implementation of internationally recognised human rights. Indeed, statisticians can play an invaluable role in the protection and promotion of human rights of all distinctions, in particular economic, social and cultural rights.

Discussion has been underway within the international human rights community for a number of years on the pertinence of using social and economic indicators as a means of determining the scale of compliance or non-compliance by Governments with their human rights obligations. These efforts began, in many respects, with the work of the UN's Special Rapporteur on Economic, Social and Cultural Rights, Prof. Danilo Türk. While the dangers of inaccurate (or patently wrong) statistics, non-reliability, the potential mis-use of manipulated statistics, the non-comparative nature of data and a range of other imperfections were clearly registered by Türk in his reports between 1989-1992 (in particular his 1990 report, which was one of the early efforts by the UN human rights programme to address the need to develop indicators as a means of promoting compliance with economic, social and cultural rights), overall support for using statistical data as *one* of many means of determining compliance with human rights obligations has increased.¹³

Türk also warned of falsely premised pronouncements which wrongly presume that economic and social issues *per se* are always synonymous with human rights concerns. Indeed, while more must be done to incorporate economic and social rights into economic and social indicators, a country having good indicators in certain economic and social areas is not necessarily the same as that nation having a good record on economic and social rights. The hard-hitting criticism of Canada by the UN Committee on Economic, Social and Cultural Rights in December 1998 on Canada's many serious failings to uphold the rights established in the International Covenant on Economic, Social and Cultural Rights flies in the face of Canada's first place showing in the 1998 *Human Development Report*. This example - merely one of many - provides as clear a case as any that indicators based on statistics do not invariably provide an objective basis for understanding the scale of enjoyment of economic and social rights issues in a given country. There are, and always will be, dangers that general statistics purport to reveal a given situation, but actually uncover little of actual substance when viewed through a human rights prism.

One fundamental notion continues to affect efforts devoted to achieving these rights; that of the 'progressive realisation' of ESC rights as outlined in article 2 of the Covenant. Although

¹² General Comment No. 4 (para. 11).

¹³ UN doc. E/CN.4/Sub.2/1990/19.

this provision was designed and has been interpreted in an entirely realistic and positive manner, this two-word clause has been relied upon by many States as an escape hatch allowing them to wiggle out of their freely accepted legal obligations on ESC rights. Consequently, were statisticians able to develop an internationally relevant series of measurements indicating with precision whether or not a given State had ‘progressively realised’ or conversely ‘regressively failed’ with respect to each of the economic and social rights, this would be of great benefit to governments, international organisations, human rights lawyers, NGOs and ultimately to the individual beneficiaries of these rights.

Moreover, this measurement would be of use in determining whether and, if so, to what scale, violations of ESC rights had occurred, given that the taking of *deliberately retrogressive measures* has been classified as incompatible with economic, social and cultural rights. In addition, this would facilitate the development of creative and comprehensive methods of monitoring the success of national programmes specifically designed to support the full realisation of ESC rights as well.

Statisticians also have a vital role to play in working to define when a *minimum core obligation* of a Government accepting these rights or a *minimum core entitlement* of a person entitled to enjoy a given right has or has not been met. What are the minimum duties of States with respect to the right to housing? What minimum rights to housing does an individual possess? These are important questions to which indicators can be applied by the international statistics world. The European Committee of Independent Experts which monitors compliance with the European Social Charter, to cite but one example, has developed what it calls a *decency threshold* for determining whether a given State has protected the right to a decent standard of living. This threshold is not the same for all States, but is based on 68% of the national wage average in the country concerned. Persons who earn below that level, therefore, would not be enjoying this right. Creative methods such as this designed to give justiciable precision to economic and social rights which may be phrased in very general terms, should also be considered by the international statistical community.

International human rights law stipulates that States which have ratified the Covenant are to devote the *maximum of available resources* towards this end. This is another fundamental element of the international law on ESC rights, but one often abused by States seeking to avoid criticism or condemnation for misappropriation of national resources.¹⁴ Statisticians can help defend human rights by assisting the human rights world to understand - in as precise a manner as is possible - what this phrase means in actual terms. If such an open-ended idea can be disaggregated to a sufficient degree, and in a way which reflects the contents of the rights concerned, this would be of substantial assistance to the cause of human rights. Examining whether a State has indeed devoted the maximum of its available resources towards the full realisation of ESC rights will equally assist in revealing that economic and social policies and programmes are not automatically synonymous with economic and social rights. In addition, such measurements should be able to display whether any acts of commission or acts of omission resulting in violations of ESC rights were due to the unwillingness of States to comply or to the simple incapacity to secure such rights.¹⁵

¹⁴ For an excellent analysis of this norm, see Robert Robertson (1994) *Measuring State Compliance with the Obligation to Devote the “Maximum Available Resources” to Realizing Economic, Social and Cultural Rights*, in *Human Rights Quarterly*, vol. 16, 693.

¹⁵ On this distinction and on all issues linked to violations of ESC rights, see *The Maastricht Guidelines*

Because statistics are particularly crucial when seeking to determine the scale and context of substantive discrimination against certain racial, ethnic, national or other groups with respect to the enjoyment of ESC rights, statisticians have yet another crucial role to play in developing methods of applying such statistics to ESC rights. By applying the correct variables to the right situations and circumstances, patterns of substantive discrimination against particular groups can be discerned. In doing this, it will be important to examine not just public actions and omissions, but those of the international financial institutions and non-state actors as well. Statisticians could additionally consider convening a meeting to develop 10 key indicators per article of the Covenant on Economic, Social and Cultural Rights which in turn could be used by UN, National Human Rights Institutions and other institutions towards the development of National Action Plans and benchmarks on ESC rights.

The role of those working in the world of statistics to assist in the defence of human rights is significant and much larger than commonly assumed. Increasing such involvement will not come on its own. Concerted efforts will need to be made by statisticians themselves to encourage governments the world over to promote this role and to provide the resources required to make it happen.

6. A Housing Rights Checklist: Developing a Composite Housing Rights Indicator

Of all the internationally recognised ESC rights, indicators relevant to housing rights are probably the most sparse and unreliable. Few governments collect the type of data required to gain a reasonably reliable picture of the degree to which housing rights are enjoyed in given countries and the implications such statistics might have for policy makers in this respect. The highly personal nature of housing processes (which do not generally benefit directly from governmental financial inputs, given the small portion of public expenditure most governments devote to housing; particularly compared to average spending on other ESC rights such as health and education), coupled with the fact that a high proportion of persons who do not enjoy a fully realised right to housing reside in unregulated circumstances and communities, more difficult to access by during exercises in data collection have contributed to paucity of international statistics with meaningful relevant to monitoring the enjoyment of housing rights.

While the development of a composite *housing rights indicator* will require extensive discussion by experts in the field, eight key areas that could be incorporated into such a measurement tool include the following:

- Public Expenditure on Housing as a Percentage of National Budgets
- Percentage of Population with Access to Potable Indoor Running Water and Electricity
- Percentage of Population Legally Protected with Security of Tenure Rights
- Average Household Expenditure on Housing as a Percentage of Income
- Percentage of Population Residing in Informal or Irregular Housing
- Total Number of Homeless Persons
- Legal Status of Housing Rights
- Access to Affordable and Impartial Judicial and Other Remedies

on Violations of Economic, Social and Cultural Rights (1998) in *Human Rights Quarterly*, vol. 20 (3), 691. See also, Scott Leckie (1998) *Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights* (1998) in *Human Rights Quarterly*, vol. 20(1), 81.

7. Essentially Cost-Free Measures to Promote and Protect Housing Rights

It is sometimes argued that while the proposition that housing is a human right may sound beyond reproach, fiscal arguments and other monetary considerations are simply too persuasive to make this right a reality. Such views, however, fail to recognise that many of the obligations associated with housing rights do not require regular budgetary expenditure. State duties to ensure the full realization of housing rights are - as is the situation with all human rights - cover the full spectrum of obligations from measures that are essentially cost-free to those clearly requiring public expenditure and all variations in between. This is particularly true concerning the *respect obligations* associated with ESC rights mentioned above.¹⁶

Securing housing rights (*and civil and political rights for that matter*) for the most disadvantaged sectors of society will cost the State money, however, this should not be taken (as it so often is) to imply that *all* elements of housing rights necessarily require substantial financial allocations. 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. Because 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. 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 organisations to operate and organise freely and so forth may involve shifting resources, but 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.¹⁷

8. Preventing Forced Evictions: General Comment No. 7 (1997)

International standards addressing the practice of forced evictions grew considerably in the 1990s, both in terms of scope, as well as in the consistent equation of forced evictions with violations of human rights, in particular housing rights. The United Nations Commission on Human Rights has declared forced evictions as "gross violations of human rights, in particular the human right to adequate housing" (Res. 1993/77); a perspective echoed on

¹⁶ In third world cities, between 40 to 70 per cent of all new housing is built by the eventual occupants themselves, most often outside legal regulations. See J. Hardoy & D. Satterthwaite, *Squatter Citizen: Life in the Urban Third World*, 1989.

¹⁷ 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.

numerous occasions by various UN human rights bodies and other human rights institutions.¹⁸ In one of its first of what have become regular pronouncements on forced evictions, the UN Committee on Economic, Social and Cultural Rights declared in General Comment No. 4 (1991) that:

... instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law. (Para. 18)

Several years after issuing this statement, the Committee adopted what is now widely seen to be the most comprehensive decision yet under international law on forced evictions and

¹⁸ The UN Committee on Economic, Social and Cultural Rights General Comment No. 2 on International Technical Assistance Measures, adopted on 2 February 1990 at its fourth session, addresses the obligations of the World Bank and IMF concerning the financing of projects involving evictions. In particular, paragraph 6 of General Comment No. 2 draws the attention of the international financial institutions, in particular the World Bank and IMF to the view of the Committee that:

International agencies should scrupulously avoid involvement in projects which, for example...promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or ***involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation***... Every effort should be made, at each phase of a development, to ensure that the rights contained in the Covenant are taken duly into account.

In addition, most of the global summits held during the 1990s also addressed forced evictions. The Habitat Agenda: Goals and Principles, Commitments and Global Plan of Action, adopted 14 June 1996, Istanbul) also addresses forced evictions:

We further commit ourselves to the objectives of: Protecting all people from and providing legal protection and redress for forced evictions that are contrary to the law, taking human rights into consideration; when eviction are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided. (Para. 40(n))

The Copenhagen Programme of Action, World Summit for Social Development, adopted 12 March 1995, stated that: 'Wherever possible, development schemes that do not displace local population, and designing an appropriate policy and legal framework to compensate the displaced for their losses, to help them to re-establish their livelihoods and to promote their recovery from social and cultural disruption', while Agenda 21, UN Conference on Environment and Development, adopted June 1992, noted that: 'People should be protected by law against unfair eviction from their homes or land. (Chap. 7.9 (b)).

The UN Global Strategy for Shelter to the Year 2000 was unanimously approved by the United Nations General Assembly on 21 December 1988, and has consequently set the international housing agenda for the 1990s. Though it largely neglects many of the issues concerning forced evictions, one clause is relevant.

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 (Para 13).

A number of declarations and recommendations dealing with housing issues adopted by international institutions address the practice of eviction, in explicit terms. The 1976 UN Vancouver Declaration on Human Settlements most notably, defines acceptable behaviour relating to evictions in the following two clauses: 'The undertaking of major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made' and '...The ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their homes or land, or to entrench privilege and exploitation. The human settlement policies must be in conformity with the declaration of principles [on Human Settlements] and the Universal Declaration of Human Rights'.

human rights on 16 May 1997. *General Comment No. 7 on Forced Evictions*, significantly expands the protection afforded dwellers against eviction, and goes considerably further than most previous pronouncements in detailing what governments, landlords and institutions such as the World Bank must do to preclude forced evictions and, by inference, to prevent violations of human rights.¹⁹ It represents a milestone in people-driven global efforts against forced eviction, and can act as a foundation upon which civil society can demand protection against a practice which results in the de-housing of millions of persons every year. The general comment is the first such document issued by this Committee to deal with a specific violation of the Covenant. The Centre on Housing Rights and Evictions (COHRE) has estimated that more than 13 million people are currently under threat of losing their homes due to planned evictions, the Comment is particularly timely.²⁰

General Comment No. 7 asserts that "the State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions". It also urges countries to "ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards by private persons or bodies". In addition to governments, therefore, private landlords, developers and international institutions such as the World Bank and any other third parties or non-State actors are subject to the relevant legal obligations and can anticipate the enforcement of law against them if they "carry out forced evictions". The rules require governments to ensure that protective laws are in place domestically and that they punish persons responsible for forced evictions carried out without proper safeguards.

The role of an appropriate domestic legal framework as a means of securing protection for people against forced evictions is a pervasive theme throughout General Comment No. 7, which notes that "legislation is an essential basis upon which to build a system of effective protection". Governments which wish to act in good faith with their housing rights obligations and comply with the sentiments expressed in the Comment, therefore, should consider adopting laws expressly prohibiting forced evictions and developing proper legal procedures which can be drawn upon by evictees to secure the prosecution and punishment of "persons or bodies" who may have carried out illegal evictions.

While extending protection to all persons, the Comment gives special consideration to groups which suffer disproportionately from forced evictions, including women, children, youth, older persons, indigenous people and ethnic and other minorities. With respect to the rights of women, the text asserts that "women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless".

General Comment No. 7 breaks new ground by declaring that *evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights*, thus

¹⁹ For a comprehensive analysis of developments under international law until mid-1995, see: Scott Leckie (1995) *When Push Comes to Shove: Forced Evictions and Human Rights*, Habitat International Coalition, Mexico. See also: Patrick M. McFadden (1996) "The Right to Stay" in *Vanderbilt Journal of Transnational Law*, vol. 29, no. 1, 1.

²⁰ Centre on Housing Rights and Evictions (1998) *Global Survey on Forced Evictions No. 7*, Geneva.

making it incumbent on governments to guarantee that people who are evicted - whether illegally or in accordance with the law - are to be ensured some form of alternative housing. This would be consistent with other provisions in the Comment that "all individuals have a right to adequate compensation for any property, both personal and real, which is affected". It adds that "legal remedies should be provided to those who are affected by eviction orders". If Governments follow the provisions of the Comment, therefore, no one should ever be forced into the realms of homelessness or be subjected to violations of their human rights because of facing eviction, notwithstanding the rationale behind it.

The Comment implores States parties to explore "all feasible alternatives" prior to carrying out any forced evictions, with a view to avoiding or at least minimising the use of force or precluding the eviction all together. It provides further assurances for people evicted to receive adequate compensation for any real or personal property affected by an eviction. When forced evictions are carried out as a last resort and in full accordance with the Comment, affected persons must, in addition to being assured that homelessness will not occur, also be afforded the following eight prerequisites prior to any eviction taking place; each of which might have a deterrent effect and result in a planned evictions being prevented: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

9. Resisting Eviction: Lessons From the Front Line

The forced eviction of people from their homes or lands is rarely a quiet and passive process. Acts of forced eviction - whether carried out to construct a large dam, in the context of ethnic cleansing or simply to gentrify a trendy neighbourhood - are almost invariably accompanied by attempts by those affected to resist the eviction and stay in their homes. Though perhaps most initiatives to stop evictions before they occur eventually fail, ending in displacement, there are no shortage of inspiring and courageous cases where planned evictions have been revoked and the people allowed to remain in their homes on their lands.

In 1991 in Zambia some 17,000 families (at least 85,000 people) were spared planned eviction due to the efforts of a local women's rights organization, ZWOSAG. Basing claims on international human rights standards on eviction in negotiations with Government officials, ZWOSAG was able to obtain a suspension order from the Minister for Local Government and Housing who went on national television and radio to announce the suspension, and who urged local authorities throughout Zambia to refrain from carrying out forced evictions. In Nigeria, the Social and Economic Rights Action Center (SERAC) submitted complaints to the World Bank Inspection Panel attempting to prevent mass evictions in Lagos which would result from the Bank-funded Lagos Drainage and Sanitation Project (LDSP). In Brazil, anti-eviction campaigners utilize *Special Social Interest Zones* (urban areas specifically zoned for social housing) as a means of preventing evictions. In the Philippines various strategies have been employed to halt evictions before they are carried

out. In addition to community organizing and popular mobilisation, the use of the media, lobbying efforts, the use of human rights arguments based on international law and other measures, legal strategies based on the 1992 Urban Development and Housing Act have sometimes been successful. In the Dominican Republic more than 70,000 slum dwellers in the capital Santo Domingo were allowed to remain in their homes despite the issuance of Presidential Decree ordering the immediate eviction of the community of La Cienega-los Guandules, following condemnation of the planned eviction by the UN Committee on Economic, Social and Cultural Rights. Housing rights campaigners in the country have often asserted that without the urging of the Committee, the residents of the communities would have been evicted. A year earlier, the same Committee declared - for the first time - that a State party (the Dominican Republic) had violated international law because of the scale of forced evictions in the country. In Thailand, several evictions have been prevented or considerably reduced in scale through an eviction prevention technique referred to as 'landsharing', where the land owner of a slum agrees to resettle the current residents on-site in exchange for full use of a large segment of the land concerned. While in Pakistan, the Urban Resource Centre regularly prepares alternative plans to government plans involving eviction, as a means of preventing evictions. Any number of additional examples of strategies against planned evictions could be provided, but even this cursory examination reveals that eviction can be prevented using a wide range of measures, all of which are premised on the human rights of the persons and communities affected.²¹

10. Evictors as International Criminals: Housing Rights and Armed Conflict

Although violations of housing rights are not always considered as seriously as violations of other human rights, recent developments involving the prosecution of war criminals and those who have committed crimes against humanity will enable the international community to hold those ordering forced evictions and other housing rights violations accountable. Armed conflicts result in thousands and sometimes millions of persons being forcibly evicted from their homes or forced to flee their homes for their own safety, despite protections under international humanitarian law expressly prohibiting such evictions unless the security of the inhabitants can only be secured through temporary displacement. Under article 49 of the 4th Geneva Convention Relative to the Protection of Civilian Persons in Time of War August 12, 1949:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited regardless of their motive.

While article 17 of Protocol II Concerning Non-International Armed Conflicts (1977) indicates that:

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

²¹ For more comprehensive survey of strategies, see: Centre on Housing Rights and Evictions (2000) *Successfully Resisting Forced Eviction: Case Studies*, Geneva.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

During the 1990s, and as a result of the violent conflicts in Bosnia, Rwanda, Kosovo, East Timor and elsewhere, considerable attention has been devoted to creating international courts and commissions entrusted with bringing those individuals responsible for war crimes and crimes against humanity to justice. The Statutes of the International Criminal Court, the International Tribunals on the Former Yugoslavia and Rwanda each provide the legal basis necessary to prosecute persons responsible not just for crimes such as murder, rape or torture, but for the related crimes of 'destruction or appropriation of property', 'destruction of cities', 'inhumane acts', or 'ordering the displacement of the civilian population'. As such, housing rights violations carried out during armed conflicts or those generally subject to the jurisdiction of the various mechanisms developed to prosecute war criminals, can now act as one of the grounds on which to base complaints for housing justice.

11. The Right to Housing Restitution

The past decade has produced considerably expanded attention to the issue of housing and property restitution and compensation for refugees, internally displaced persons and others who lost housing or property during periods of exile from their original homes. In recognition of the scale of this problem, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the 'Sub-Commission on the Promotion and Protection of Human Rights') adopted resolution 1998/26 on *Housing and Property Restitution for Refugees and Internally Displaced Persons*. Resolution 1998/26 reaffirms the rights of refugees and IDPs to 'return to their homes and places of habitual residence in their country and/or place of origin, should they so wish'. This resolution and many other recent pronouncements of a similar nature, therefore, recognise that refugees and IDPs have not only a right to return to their countries of origin, but *to the actual homes they lived in at the time of their initial flight*. This has come to be known as the right to restitution of one's original home. Despite this legal recognition, however, millions of potential returnees cannot currently enjoy their lawful rights to housing and property due to the impossibility of return.

While many factors have influenced the renewed emphasis on housing and property restitution, much is due to the changing nature of the origins and manner by which displacement has taken place in recent years, in particular the practices of 'ethnic cleansing', forced evictions and the growing scale of housing and property destruction resulting from armed conflicts. Ensuring the *reversal* of ethnic cleansing and violent forced evictions has probably contributed more than any other force to strengthening the rights associated with housing and property restitution. It is primarily in those countries where ethnic cleansing were carried out that refugees have the strongest rights to restitution. Moreover, it has been widely recognised that ensuring these rights prevents refugees from being penalised or losing their homes and properties purely on the grounds that they fled their homes due to forces beyond their control. In terms of the human rights implications of this right, it emerges from a combination of rights including the right to adequate housing, the right to property and the peaceful enjoyment of possessions, the right to privacy and respect for the home, the right to freedom of movement and to choose one's residence, and the legal doctrines of reasonableness, proportionality and fair balance.

Institutions designed to promote the rights of persons to return to their original homes have been established in many settings. In Bosnia, the Commission on Real Property Claims (CRPC) was established under the Dayton Agreements to settle outstanding disputes and facilitate return²², and in Georgia work is underway towards the creation of a Housing and Property Claims Commission to ensure restitution to refugees and IDPs forced from their homes in the early 1990s. In Kosovo, the UN Mission in Kosovo (UNMIK) established a Housing and Property Directorate (HPD) in mid-November 1999 to facilitate the regularisation of the highly complex housing and property situation in the territory. The effectiveness of these bodies will be determined, in many respects, by how they are able to cope with the many obstacles that can be placed in the way of housing and property restitution. Some of the more common barriers to effective restitution include the secondary occupation of homes by unlawful occupants, the adoption of abandonment laws which arbitrarily remove housing and property rights, the enforcement of discriminatory inheritance laws prohibiting women from inheriting property, the unjust and arbitrary applications of law, damage and destruction of housing, absence of effective judicial remedies, ineffective measures of compensation, and the diversity of housing and property law and practice.

In many repatriation operations in which the United Nations High Commissioner for Refugees (UNHCR) has practical experience, the resolution of housing and property issues has been a critical ingredient in the success or failure of the whole undertaking. This is particularly true with respect to Bosnia, Rwanda, Georgia, Cambodia, Guatemala, Croatia and other countries where return has been restricted due to housing and property disputes. Given the diverse political and geographical contexts where repatriation operations take place, the very broad range of activities in which UNHCR is now involved and the numerous other actors in the humanitarian field, the principles and legal framework within which they occur must be examined more closely. Features of a successful housing restitution programme would tend to include the recognition of the human right to housing, adequately rectifying unjust and arbitrary applications of law, focusing on the reconstruction and rehabilitation of damaged housing, ensuring refugee participation in developing repatriation plans, ensuring protection against homelessness or other housing rights violations, promoting processes geared towards the streamlining domestic law with relevant international law, protecting or re-establishing of housing and property records, developing systems ensuring the provision of compensation for lost immovable property, and the existence of impartial judicial and procedural remedies. To promote such approaches, UNHCR is currently considering the development of guidelines on housing and property restitution, incorporating housing and property restitution issues into UNHCR policy on voluntary return and incorporating housing and property restitution issues into first-line refugee and IDP registration procedures.

12. Housing Rights Defined

The abundance of terms used to describe housing rights has led certain commentators to equate '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 (although there are many instances where the provision of housing by the State is statutorily required). The 1995 Final Report of the UN Special Rapporteur on Housing Rights provides

²² For analysis of the CRPC, see: UNHCR, the Office of the High Representative (OHR) and the CRPC (1999) *Property and Housing Issues Affecting Repatriates and Displaced Persons in Bosnia and Herzegovina*.

guidance into how the right to adequate housing should be approached by firmly stating that this *right should not be taken to mean*: (a) That the State is required to build housing for the entire population; (b) That housing is to be provided free of charge by the State to all who request it; (c) That the State must necessarily fulfil all aspects of this right immediately upon assuming duties to do so; (d) That the State should exclusively entrust either itself or the unregulated market to ensuring this right to all; or (e) That this right will manifest itself in precisely the same manner in all circumstances and locations.²³

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 mean*: (a) 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; (b) 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 (c) 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.²⁴

In 1991, the UN Committee on Economic, Social and Cultural Rights adopted 'General Comment No. 4 on the Right to Adequate Housing'. 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.²⁵ The general comment stipulates that 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.²⁶

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 full realisation of 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 utilisation of a States maximum available resources. Above all, the maximum of available resources clause requires the effective and equitable use of combined resources immediately.²⁷

²³ E/CN.4/Sub.2/1995/12, pp. 4-5.

²⁴ E/CN.4/Sub.2/1995/12, para.12

²⁵ *id.*, para. 8.

²⁶ *id.*, para. 7.

²⁷ *id.*

As a reflection of the spectrum of States duties, a framework comprising four 'layers of obligations' (to respect, to protect, to promote and to fulfil) of States in terms of the right to adequate housing reveals additional substance and core content of this right.

While the duty to *respect* housing rights essentially implies a series of limits of state action, the obligation to *promote* compels governments to recognise the multifaceted human rights dimensions of housing and to take steps to ensure that no measures are taken with the intention of deliberately eroding the legal and practical status of this right. Moreover, comprehensive legislative review should take place, with any existing legislation or policies negatively affecting the exercise of the right to housing subjected to repeal or alteration. The promotion function additionally requires States to place sufficient legal and policy emphasis on the full realisation of housing rights, through a series of active measures including national and/or local legislative recognition of the right, the incorporation of housing rights imperatives into housing and related policies, and the identification of discernable 'benchmarks' towards the full enjoyment of housing rights by all sectors of society.

Further refinement of the policy aims required with the recognition of housing rights dictate to governments the need to adopt *national housing strategies* defining the objectives for the development of the housing sector, identifying the resources available to meet these goals, the most cost-effective way of using them and setting out the responsibilities and time-frame for the implementation of the necessary measures. Such a strategy should reflect extensive genuine consultation with, and participation by, all those affected, including the homeless, the inadequately housed and their representatives. Subsequent steps must be taken by governments to ensure co-ordination between ministries, and regional and local authorities in order to reconcile related policies with the obligations arising from the Covenant.

Accurately assessing the degree to which the right to housing remains unsatisfied or denied exists as a further element of the State's obligation to promote the norm. An identifiable effort must be made by States to identify where and to what extent the right is not in place, and consequently to target housing policies and legal measures towards attaining the right for everyone in the shortest possible time. International law has repeatedly stressed that States must give due priority to those social or other groups living in conditions not fully consistent with the contents and intent of housing rights.

The obligation to *protect* the right to housing obliges the State and its agents to prevent the violation of any individual's rights to housing by any other individual or non-state actor. Housing rights beneficiaries must, therefore, be protected from abuse by landlords, property developers, landowners or any other third party capable of abusing these rights. Where such infringements do occur, public authorities should act to preclude further deprivations as well as guaranteeing access to legal remedies for any infringement caused. Effective measures protecting persons from forced evictions, racial or other forms of discrimination, harassment, withdrawal of services or other threats must also be established.

The obligation to *fulfil* the right to adequate housing is the most positive duty. It involves issues of public expenditure, governmental regulation of the economy and land market, housing subsidies, monitoring rent levels and other housing costs, the provision of public housing, basic services, taxation and subsequent redistributive economic measures. With respect to budgetary allocations, States must establish forms and levels of expenditure adequately reflecting society's unmet housing needs, and which are consistent with the commitments arising from the Covenant

and other legal sources enshrining housing rights. The duty of fulfilment comprises those active measures by a government necessary for guaranteeing for each person under its jurisdiction opportunities to access the entitlements of housing rights that cannot be obtained or secured through exclusively personal efforts.

13. A Tool Against Ethnic Cleansing: A Global Property Registry

Though often unnoticed, cadastre markers delineating property boundaries can be found in both urban and rural areas throughout the world, and all countries have systems in place (even if desperately outdated) for the registration of housing, land and residential property. These seemingly innocuous measures are vitally important in officially determining where parcels of property or land begin and end and who owns them or is entitled to live there. While the techniques for registering land and property differ greatly between nations, the importance of updated, public, and secure housing, property and land records cannot be under-estimated. It is through such records that homes can be bought and sold, housing markets developed, property developed to increase economic development and land used particular for whatever purposes zoning or planning laws may have determined.

It is also through such records that rights to housing and property can be defended against the aims of ethnic cleansers. As the ethnically-driven forced displacement in Bosnia, Kosovo and elsewhere throughout the 1990s have made clear, removing people forcibly from their homes, confiscating personal housing and property documents, destroying housing and property and cadastral records have all been used by ethnic cleansers in their pathological attempts to perpetually alter the ethnic composition of territory and permanently prevent return. While little positive emerged from the Balkan wars of the past decade, the international community was at least unambiguous about the need to reverse ethnic cleansing and ensure the right to housing and property restitution for everyone displaced during the conflicts in the region. This was both the avowed purpose of NATO's Kosovo Campaign and Annex 7 of the Dayton Peace Agreements which ended the war in Bosnia. This has sometimes occurred in a remarkably smooth manner - such as following NATO's successful campaign in Kosovo, but in Bosnia, Croatia, and even in Kosovo (especially for Serbs who fled after the air war), the difficulties of protecting people's right to return to their original homes has been considerably augmented by the loss, destruction, fraudulent alteration and illegal confiscation of much of the records needed to prove ownership, occupancy and tenants rights. Intractable political considerations aside, were such records available the task of determining housing and property rights would be far easier.

Although virtually never examined by the international human rights community, comprehensive and regular housing, property and land registration systems are a crucial element of housing rights. Through registration the legal conferral of security of tenure is made possible, a public and transparent record of ownership and dweller rights exists and all rights relating to housing can be protected. Without it, tenure may be partially protected but only through informal means or based on political or organized crime patronage.

If the United Nations were to coordinate the establishment of a Global Property Registry - a worldwide digital database containing the housing, property and cadastre records of all countries - an independent source of this invaluable information could serve to deter ethnic cleansing, and would prevent any Government or regime from attempting to solidify ethnic cleansing by destroying such records and, in turn, protect the rights of displaced persons

against abuse. In addition, a Global Property Registry would promote the use of advanced technology to assist governments in mapping as of yet unmapped areas, in keeping housing, property and land records regularly updated and ultimately promote the right to security of tenure for all inhabitants of the planet.

14. Housing Rights in South Africa: From Global Outcast to Model

Few practices better captured what was wrong with pre-democratic South Africa than the massive forced evictions, demolitions, relocations and other housing rights violations that plagued the country during apartheid. If one looking in from abroad could not, for some reason, grasp the true implications of state-sanctioned racial violence, intolerance and discrimination, watching a violent eviction or the removal of downtown shacks provided graphic evidence of how apartheid was literally forced upon the South African majority. For decades, the UN General Assembly and a range of other UN bodies adopted stringent resolutions against the forced removals of apartheid year after year, horrified at the discriminatory nature of these evictions and the manner by which they were used in an attempt to socially engineer a South Africa where race determined where and how people would live. Indeed, apartheid could have never been held in place without the tool of eviction.

While South Africa was rebuked repeatedly for apartheid-era evictions, comparatively scant attention was given to the overall practice of eviction by the international human rights community, which instead placed emphasis on conflict-related displacement and refugee flows. In recent years, however, both the international human rights movement and democratic South Africa have given increasing attention to the need to protect people from the inhumanity of forced eviction, and have both placed this practice further into the category of exception, rather than rule. While forced evictions have by all means not been eliminated from the social landscape of the South Africa, the country is markedly different now in its approach towards practices resulting in the demolition and losses of people's homes than a few short years ago. As in so many other areas linked to the transition to a democratic nation, South Africa has gone from being *the* quintessential evictor-nation, to possessing the capacity for leading global efforts to eradicate the human rights violations so commonly linked to forced evictions.

In terms of law, South Africa has few parallels when it comes to moderating the practice of evictions. Not only have evictions been explicitly addressed in Article 26(3) of the Constitution, but subsequent implementing legislation, including the *Extension of Security of Tenure Act* (Act No. 62, 1997), the *Prevention of Illegal Evictions From and Unlawful Occupation of Land Bill* (which repealed the much maligned *Prevention of Illegal Squatting Act*) and others have been adopted in recent years to further refine constitutional protections against eviction. Article 26(3) asserts that "No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions". Because forced evictions are rarely addressed within national constitutional frameworks, it is all the more admirable that this provision found such clear recognition within the foremost law of the country. For instance, although the 1986 Philippines Constitution stipulates that "Urban and rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban or rural dwellers shall be

undertaken without adequate consultation with them and the communities where they are resettled”, few other constitutions treat evictions as a discreet human rights issue.

The *Extension of Security of Tenure Act* (Act No. 62, 1997) represents an innovative effort by South African legislators to ensure that basic security of tenure rights are accorded to all South Africans. In a welcome departure from traditional housing law in many countries, the *Extension of Security of Tenure Act*, very clearly emphasises in sec. 4 the duty of the responsible Minister to actively grant subsidies to, “enable occupiers, former occupiers and other persons who need long-term security of tenure to acquire land or rights in land”. The *Act* also explicitly outlines the rights and duties of occupiers and owners, emphasising in sec. 5 that all relevant persons shall the right to human dignity, freedom and security of the person, privacy, freedom of religion, belief and opinion and of expression, freedom of association and freedom of movement. Sec. 6 provides explicit rights to security of tenure and the right not to be denied or deprived of access to water or access to educational or health services.

In a world where ‘illegal squatters’ are commonly characterised as criminals and where homeless persons face criminal sanctions on the basis of their homelessness, as in the United States, the *Extension of Security of Tenure Act* not only breathes life into the South African Constitution, but also acts as a reflection of how tenure insecurity borne of poverty and real estate driven housing markets that fail to provide access to legal affordable housing to low-income groups, should be addressed by other nations.

The *Prevention of Illegal Evictions From and Unlawful Occupation of Land Act* sets a benchmark for other countries against which to examine their own policies on eviction. The *Act* while not prohibiting forced evictions outright (to do so would be impossible in any country), does clearly prohibit *unlawful eviction* and provides for a range of criteria based on *just and equitable* standards prior to any lawful eviction being carried out. The preamble to the *Act* encapsulates the essence of the law by revealing the balance sought to be struck between land owners and unlawful occupiers, recognising that “no one may be evicted from their home, or have their home demolished without an order of court made after considering all the relevant circumstances” and that “special consideration should be given to the rights of the elderly, children, disabled persons and particularly households headed by women, and that it should be recognised that the needs of those groups should be considered”.

The law very clearly prevents illegal land deals taking place in sec. 3, while sec. 4 regulates the manner by which evictions can be carried out. When a court is presented with a request for eviction of an unlawful occupier by a land owner, in contrast to the past, judges are now afforded discretionary powers as to if, when and how to issue an eviction order, something that was not allowed under the now repealed *Prevention of Illegal Squatting Act*. A clear distinction is made between persons who have occupied land for less than six months and those who have occupied land for longer than six months, in effect virtually granting rights to alternative land for relocation of the longer-term occupiers should an eviction order proceed. While this provision is certainly far improved to earlier laws, caution should be exercised by courts that homelessness bred by eviction is also prevented for short-term occupiers as well.

15. Violations of Housing 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. While the violations of rights associated with the practice of forced evictions is perhaps the most obvious active violation of the right to housing is the very widespread practice of forced evictions, 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 recognised housing rights standards. 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.

During the 1990s forced evictions have gone from being viewed as a human rights issue almost entirely synonymous with apartheid-era South Africa (but largely neglected elsewhere), to a practice which has received previously unparalleled attention. Evictions have been the subject of a range of international standard-setting initiatives and planned and past evictions carried out or envisaged by governments have been widely condemned. In the past few years, governments ranging from the Dominican Republic, Panama, Philippines, South Korea, to Turkey, Sudan and others have been singled out for their poor eviction records and criticised accordingly by UN and European Human Rights bodies. In 1990 in the first declaration that a State party had violated the Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights decided that the evictions that were attributable to the Government of the Dominican Republic were not merely failures to perform obligations, but in fact *violations* of internationally recognised housing rights. In this case, the Committee decided that:

....The information that had reached members of the Committee concerning the massive expulsions of nearly 15,000 families in the course of the last five years, the deplorable conditions in which the families had had to live, and the conditions in which the expulsions had taken place were deemed sufficiently serious for it to be considered that the guarantees in article 11 of the Covenant had not been respected.

This decision was followed up a year later with a similar pronouncement concerning forced evictions in Panama which not only infringed upon the right to adequate housing but also on the inhabitants' rights to privacy and security of the home. Subsequently, the Committee has decided that many States parties had in fact violated the terms of the Covenant.

As attention to ESC rights has expanded, so too has the focus on violations of these rights. Although all human rights have been regularly declared to be indivisible and interdependent with one another, far greater seriousness has been accorded violations of civil and political rights than ESC rights. However, this is changing. *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997)* provide a great deal of clarity as to which 'acts of commission' and 'acts of omission' would constitute violations of the Covenant on Economic, Social and Cultural Rights. The Maastricht Guidelines provide a useful framework for determining the compatibility of domestic actions impinging on ESC rights,

including housing rights. For instance, principles 14-15 outline structures relevant to all ESC rights:

Violations through acts of commission

14. Violations of economic, social and cultural rights can occur through the direct action of States or other entities insufficiently regulated by States. Examples of such violations include:

- (a) The formal removal or suspension of legislation necessary for the continued enjoyment of an economic, social and cultural right that is currently enjoyed;*
- (b) The active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination;*
- (c) The active support for measures adopted by third parties which are inconsistent with economic, social and cultural rights;*
- (d) The adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights, unless it is done with the purpose and effect of increasing equality and improving the realisation of economic, social and cultural rights for the most vulnerable groups;*
- (e) The adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed;*
- (f) The calculated obstruction of, or halt to, the progressive realisation of a right protected by the Covenant, unless the State is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure;*
- (g) The reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone.*

Violations through acts of omission

15. Violations of economic, social, cultural rights can also occur through the omission or failure of States to take necessary measures stemming from legal obligations. Examples of such violations include:

- (a) The failure to take appropriate steps as required under the Covenant;*
- (b) The failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant;*
- (c) The failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant;*
- (d) The failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights;*
- (e) The failure to utilize the maximum of available resources towards the full realisation of the Covenant;*
- (f) The failure to monitor the realisation of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance;*
- (g) The failure to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right guaranteed by the Covenant;*

- (h) *The failure to implement without delay a right which it is required by the Covenant to provide immediately;*
- (i) *The failure to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;*
- (j) *The failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.*

16. Criminalising Homelessness: Solution or Act of Desperation?

As remarkable as it may seem, homeless persons often face severe discrimination exclusively on the basis of their status as homeless. According to the National Law Centre on Homelessness and Poverty, in over 50 cities in the United States, for instance, legislation criminalising homelessness, preventing homeless persons from voting or otherwise denying homeless persons additional rights are currently in place.²⁸ On any given night, approximately 750,000 people in the U.S. are literally homeless--living on the streets, in public places, or in short-term emergency accommodation. Families with children are now the fastest-growing segment of the homeless population. Accompanying the rise in numbers has been a growing rise in assaults on the civil rights of homeless persons.

Many states and municipalities in the U.S. have responded to the rise in homelessness with laws and ordinances designed to criminalise homelessness or make homeless persons invisible. Such measures include laws prohibiting loitering, begging or sleeping in public. Advocacy groups, has challenged such laws on constitutional grounds as violating homeless persons' rights to freedom of speech, movement and travel and as impermissibly criminalising persons for their homeless status. As a result of such challenges, many jurisdictions are rethinking their approaches and redrafting legislation with greater sensitivity to the civil and constitutional rights of homeless persons. Alternatives to exclusionary zoning and other restrictions that seek to make homelessness invisible have also been promoted. In 1999 the U.S. Supreme Court handed down two decisions favourable to the rights of the homeless, striking down a California law that discriminated against new state residents in the granting of welfare benefits and invalidating a Chicago ordinance criminalising loitering. The rise in homelessness among children in the U.S. has created a special set of problems. While federal legislation providing for education of homeless children nation-wide has resulted in increases in school enrolment, 45% of homeless children and youth are not attending school on a regular basis and at least 10% are still not enrolled in any school. Moreover, recent years have seen a proliferation of separate and highly unequal schools where homeless children are isolated from their housed peers. Many of these "schools" are one- or two- room classrooms where students of many different age levels are taught by one or two teachers.

In order to ensure the realisation of the right of homeless persons to housing, advocates also work to monitor the enforcement of federal fair housing and housing assistance programs and lobby to increase funding for programs that assist the homeless. NGOs are working to secure

²⁸ National Law Centre on Homelessness & Poverty (1996) *Mean Sweeps: A Report on Anti-Homeless Laws, Litigation and Alternatives in 50 United States Cities*, Washington DC.

increased funding for homeless programs under the Stewart B. McKinney Homeless Assistance Act, which is up for reauthorization in the current Congress.

Such measures have not, of course, been isolated to the United States. Until recently, a left-over from the Marcos dictatorship in the Philippines - Presidential Decree 772 (now repealed) - allowed the application of criminal law penalties against squatters, despite the fact that at least half of the dwellers in Philippine urban areas are, in fact, squatters. In many slums in the developing world, most aspects of life for the poor - the land on which they live, their housing, their jobs, and even their drinking parlours are all technically illegal.

17. The Need for New Housing Rights Standards

Serious consideration should be given to further entrenching international mechanisms relating to the human right to adequate housing. Two measures would be particularly timely. Firstly, there are convincing arguments for the establishment of a permanent procedure of the Commission on Human Rights to sustainably promote, protect and defend the human right to adequate housing. While a second measure would involve further international, regional and national standard-setting in the area of the human right to adequate housing. 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. For instance, a United Nations Expert Group on the Human Right to Adequate Housing concluded in 1996 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".²⁹

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).³⁰ His final report reiterates that States should give serious consideration to the possible adoption of such a convention. Additionally, the UN Office of the High Commissioner for Human Rights has given some attention to the drafting of guidelines for the planning of international events.³¹ The draft guidelines are designed to persuade States to take

²⁹ 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).

³⁰ 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.

³¹ Guidelines on international events and forced evictions (Report of the Secretary-General), E/CN.4/Sub.2/1995/13.

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. A set of *Comprehensive Human Rights Guidelines on Development-Based Displacement* was adopted at a UN expert seminar in 1997 and is currently pending approval by the UN Commission on Human Rights.³²

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.

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 recognised 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 fulfilment 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".³³ 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".³⁴

18. Security of Tenure as a Human Right and the Emerging Right to Security of Place

Of all elements of the right to housing, it is perhaps the right to security of tenure that forms the most indispensable core element of the norm. When security of tenure - the right to feel safe in one's own home, to control one's own housing environment and the right not to be arbitrarily forcibly evicted - is threatened or simply non-existent, the full enjoyment of

³² E/CN.4/Sub.2/1997/7

³³ E/CN.4/Sub.2/1995/12, paras. 162 & 165.

³⁴ E/CN.4/Sub.2/1995/12, para. 164.

housing rights is highly unlikely. Considering security of tenure in terms of human rights also allows an approach to housing treats all persons on the basis of equality. While it is true that all human rights are premised on principles of equality and non-discrimination, seeing security of tenure as a human right (rather than as a by-product of ownership or the comparatively rare cases of strong protection for private tenants) opens up the realm of human rights not merely to all people, but to *all people of all incomes and in all housing sectors*.

Because the rights associated with ownership of housing tend in practice to generally to offer considerably higher (and thus more secure) levels of tenure, protection against eviction or other violations of housing rights than those afforded renting tenants or those residing in informal settlements (where perhaps one-quarter of humanity resides), the right to security of tenure raises the baseline - or minimum core entitlement - guaranteed to all persons who possess housing rights based on international human rights standards. While security of tenure cannot always guarantee that forced evictions will be prohibited *in toto*, (particularly in lawless situations of conflict) perhaps no other measure can contribute as much to fulfilling the promise of housing rights than the conferral of this form of legal recognition.

In recognition of the central place of security of tenure to the rights of dwellers (just as everyone is (or at least should be by right) a citizen, so too is everyone a dweller) as well as to the important role it can play to promoting individual and family investments in the improvement of their own homes, international human rights standards are increasingly approaching security of tenure in terms of human rights. In General Comment No. 4 on the Right to Adequate Housing (E/1992/23) approved in 1991 by the UN Committee on Economic, Social and Cultural Rights (and which is widely considered to be the single most authoritative international legal interpretation of what the right to housing actually means in terms of international law), security of tenure is given particular prominence. In defining the nature of adequate housing under the Covenant on Economic, Social and Cultural Rights, legal security of tenure is addressed in the following manner:

Tenure takes a variety of forms, including rental (public and private) accommodation, co-operative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups (Para. 8(a)).

Similar perspectives have been included within a wide cross section of UN resolutions, many of which urge governments to confer immediately the right to security of tenure to all persons currently lacking this protection. For instance, UN Commission on Human Rights resolution 1993/77 encourages governments to "confer legal security of tenure to all persons currently threatened with forced eviction and to adopt all necessary measures giving full protection against forced evictions, based upon effective participation, consultation and negotiation with affected persons or groups". Given that most national legal systems recognise various degrees of tenure already, this encouragement by the UN Commission on Human Rights should be feasible to implement in all States.

No other measures will assist in promoting the enjoyment of the right to housing more constructively than the provision of security of tenure through the adoption and enforcement of appropriate laws that guarantee these rights in law and practice. This right is also cheap to confer and is viable in all countries notwithstanding overall levels of human development. The conferral of secure tenure is particularly important to slum dwellers, squatters, residents of housing owned or controlled by exploitative landlords, and others threatened by insecure housing situations and most likely to be evicted. When security of tenure is squarely in place, people are legally protected from most forms of forced eviction and consequently (even in the worst of slums) will begin investing in their own homes, and in the process augmenting the enjoyment of housing rights through personal efforts. While there are obvious distinctions between the systems and structures in which tenure security is generated, the universal importance and relevance of secure tenure is clear.

As indispensable as security of tenure may be, however, hundreds of millions of people live in housing which lacks basic legal protection against eviction and other forms of displacement. This absence of secure tenure can allow persons in unregulated communities the opportunity of dwelling in a location in close proximity to sources of income, but can equally allow government or private owners to far more easily evict them to free the land for other purposes than would be the case were tenure rights in place. The conferral of security of tenure may not necessarily be sufficient to protect people against some of the more odious forms of displacement such as 'ethnic cleansing' (or more correctly 'ethnic purging') or some forms of development-based displacement, but in the vast majority of cases, this right can play a significant role in preventing displacement, promoting investments into the improvement of homes and communities and ensure that people feel safe and secure in their homes no matter how physically inadequate they may be.

Security of tenure protections may be strengthened further if support can be obtained for a composite right to security of place; a right encapsulating the full spectrum of human rights concerns and a perfect reflection of the principles of indivisibility and interdependence. The United Nations High Commissioner for Human Rights, Ms. Mary Robinson, spoke forcefully at a United Nations Expert Group Meeting on practical Aspects of the Human Right to Adequate Housing held from 9-11 March 1999 in support of establishing a UN Housing Rights Programme (UNHRP). Robinson used the occasion to outline her views on housing rights and eviction issues and the following quote from her opening statements gives a sense of how her Office now views the fundamental issues, and can be referred to as evidence of the official position of the Office of the High Commissioner for Human Rights:

*In 1997 an expert group meeting convened by our Office adopted the **Comprehensive Human Rights Guidelines on Development-Based Displacement**, which seek to steer States away from the practice of forced evictions carried out in connection with development projects. In this connection the Guidelines provide that States should ensure that no persons, groups or communities are rendered homeless or are exposed to the violation of any other human rights as a consequence of a forced eviction. In addition, States should fully explore all possible alternatives to any act involving forced eviction. In this regard, all affected persons, including women, children and indigenous, shall have the right to all relevant information and the right to full participation and consultation throughout the entire process and to propose any alternatives. In the event that agreement cannot be reached, an independent body, such as a court of law, tribunal, or ombudsman, may be called upon. Once adopted by*

the international community, these principles shall provide guidance in preventing violations of housing rights such as forced evictions.

Since all human rights are to be treated equally, in an interdependent and indivisible manner, we should begin discussions on what could be called the right to security of place. This right exemplifies the convergence of civil and political and economic, social and cultural rights and places three forms of security into an indispensable human rights framework. Firstly, this right encapsulates the notion of physical security-protection of physical integrity, safety from harm, and guarantees that basic rights will be respected. Secondly, this right incorporates all dimensions of human security-or the economic and social side of the security equation. While thirdly, the right to security of place recognises the importance of tenure rights (for tenants, owners and those too poor to afford to rent or buy a home) and the crucial right to be protected against any arbitrary or forced eviction from one's home. This manifestation of security intrinsically links to housing rights concerns during times of peace and to housing rights issues arising in the midst of armed conflict and humanitarian disasters. I hope this gathering can discuss the notion of the right to security of place to determine how this might assist in improving the protection of housing rights everywhere.

To this purpose I would like to bring of your attention the background paper before you which proposes numerous and creative ideas for joint actions. In fact, it is as an Inter-Agency draft Plan of Action to develop a system wide United Nations Housing Rights Programme. I am convinced that only through such joint efforts focussed on each of the key economic, social and cultural rights, can we act forcefully enough to secure these rights for everyone, everywhere. I hope that the acronym 'UNHRP' will eventually become a symbol of a successful programme on economic, social and cultural rights and provide an impetus to develop similar plans on all these rights in the near future.

....

Housing rights violations during periods of ethnic violence and armed conflict tend to be massive, but often under-estimated as a source of tension. Moreover, housing and property disputes in post-conflict situations (Bosnia, Georgia and Rwanda, to name several) present some of the most difficult challenges to policy-makers seeking to build peaceful, multi-ethnic societies. Incorporating housing rights component into all field operations could perform a very useful function in giving housing issues the higher profile they deserve. A joint pilot project between Habitat and my Office could prove a very practical way to formalise our UN Housing Rights Programme and to begin what will hopefully become a fruitful, much longer-term relationship, where we together work coordinately towards the goal of ridding the earth of housing rights violations in our lifetime. (9 March 1999, Geneva)

19. Complaining About Housing Rights?

The right to an effective remedy in the event of human rights violations is a central tenet of international human rights law, and has been recognized since the adoption of the Universal Declaration on Human Rights. Indeed, many have argued that there can be effectively no rights without remedies. While such views may require slightly more nuanced approaches, the provision of remedies is almost invariably an indispensable element of any effective

human rights strategy, including those designed to promote and protect economic, social and cultural rights, including housing rights. The right to a remedy, in turn, raises the related issue of what form such remedies can manifest and in which form such issues can be raised. If housing rights are to be subject to 'effective remedies', then these rights must also be seen as capable of judicial consideration and to be sufficiently precise to command clear decisions by courts of law or through non-judicial routes of action geared to protect housing rights.

The Committee on Economic, Social and Cultural Rights has emphasised the importance of ensuring that domestic legal remedies are available to all beneficiaries of housing rights, in particular with respect to illegal evictions or discrimination in access to housing. In its' General Comment No. 4. "The Committee 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:

- (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions;
- (b) legal procedures seeking compensation following an illegal eviction;
- (c) 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;
- (d) allegations of any form of discrimination in the allocation and availability of access to housing; and
- (e) 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 (para. 17).

These convincing sentiments, based as they are on the practice of States and the very nature of housing rights, reveal that there is nothing inherent in housing rights that makes these rights incapable of judicial consideration. The compatibility of housing rights standards and the capacity of making complaints, however, is by no means automatic. In numerous - if not the vast majority - countries not only is an independent and impartial judiciary seriously lacking, but even more so are rights to legal aid and assistance for lower income groups needing to pursue legal remedies following violations of housing rights. Even where legal aid programmes do exist, the right to counsel is generally reserved for criminal cases, leaving persons pursuing civil matters (as most housing rights cases would be), without rights to a lawyer. Such circumstances are by no means reserved for developing countries.

Many housing groups and other community-based movements struggling against pending evictions and towards other housing rights objectives find it impossible to access affordable lawyers to represent them and assist in adjudicating their cases. In New York City, for instance, nearly 90% of all tenants facing eviction appear without counsel at eviction proceedings, whereas in 98% of landlords do have legal counsel. By providing counsel to low-income tenants in eviction proceedings, US\$ 67 million in public funds could be saved. New York's Housing Court presides over summary eviction proceedings that result in an

average of 25,000 evictions each year, while throughout the city as a whole, over 350,000 attempts at eviction are made annually.³⁵ The establishment of an *international housing rights legal aid fund* to provide legal assistance and advocacy to communities and groups in the developing world unable to access lawyers and thus judicial remedies could be a useful addition to the NGO community in support of housing rights.

20. The State as Housing Provider

While human rights law does not require governments - as part of the obligations inherent in the recognition of housing rights - to actually construct homes for the population at large, the laws and jurisprudence of many States stipulate that under certain circumstances, governments may be *legally required* to provide particular persons or groups of persons with adequate housing. To argue, therefore, that housing rights obligations never signify the substantive provision of a home by the State to those in particular need is incorrect.

General Comment No. 4 on the right to adequate housing attests: "While the most appropriate means for achieving the full realisation 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 organisations 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. A United Nations Expert Group Meeting on the Human Right to Adequate Housing, held prior to the Habitat II Conference, declared in January 1996 that:

"Among the core areas of the State role in realising 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]³⁶

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.

³⁵ See: Housing Court, Evictions and Homelessness: The Costs and Benefits of Establishing a Right to Counsel, published by Community Training and Resource Center and City-Wide Task Force on Housing Court, Inc., 1993, New York.

³⁶ 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.

Legislation in Finland, for instance, creates statutory duties on behalf of local government authorities to provide, under certain circumstances, housing resources for the severely disabled. (Art. 8(2) Act No. 380/1987). Further laws, including an amendment to the Child Welfare Act (No. 683/1983), local government must rectify inadequate housing conditions or, as the case may be, provide for housing when inadequate or non-existent housing causes the need for special child welfare or constitutes a substantial hindrance to the rehabilitation of the child or the family.³⁷

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....".³⁸ 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".³⁹

An official submission by the government of Germany has stated that '[I]n the case of homelessness, Article 1(1), in association with Articles 2(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.⁴⁰ An independent commentator has backed this view, asserted that German case law can be construed to reveal a right to housing, although an independent right to housing is not established pursuant to the German Basic Law.⁴¹ Moreover, even in certain US cities such as New York, the public authorities are under an obligation to at least provide temporary shelter to homeless persons and families. In many developing countries the direct supplying of land to landless families amounts to the same type of substantive provision.

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

³⁷ 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.

³⁸ For an analysis of this and other relevant housing rights in the U.K., see: Geoffrey Randall (1994) Housing Rights Guide, SHAC, London.

³⁹ Law 90/449 of 31 May 1990 (visant á la mise en oeuvre du droit au logement ['Loi Besson'], France).

⁴⁰ Note verbale by the Permanent Mission of Germany to the UN Centre for Human Rights, 23 February 1994, pp. 8-9.

⁴¹ See: K. Bernd Ruthers (1993) "Ein Grundrecht auf Wohnung durch die Hintertür" in Neue Juristische Wochenschrift (2.588).

national population by the State is neither the intent nor obligation of States recognising the right to housing. At the same time, however, some governments have accepted such obligations under given circumstances.

21. The Role of Domestic Courts in Protecting Housing Rights: The Case of India

While judicial remedies can only ever form part of any successful formula for ensuring the society-wide enjoyment of housing rights, courts of law can be driving forces in support of housing rights. This is particularly true in India. For more than two decades the Indian Supreme Court has issued a range of far-reaching decisions relying both on the right to life provisions found in Article 21 of the Constitution⁴², as well as the Directive Principles of the Indian Constitution and other norms to protect the housing rights of dwellers, and provide substance to these rights.⁴³

In 1978, the Court first found in the case of Maneka Gandhi v. Union of India (1978, 1 SCC 248) that the right to life provisions in the Constitution must be taken to mean 'the right to live with dignity'. Building on this conclusion, in the 1981 case of Francis Coralie v. Union Territory of Delhi (AIR 1981 SC 746), Justices Bhagwati and Murtaza Fazal Ali asserted that "The fundamental right to life which is the most precious human right and which forms the arc of all other rights must, therefore, be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bear necessities of life such as adequate nutrition, clothing, and shelter over the head".⁴⁴

In what has become clearly the most celebrated Indian case in this regard, known colloquially as the 'Bombay Pavement Dwellers Case', the Court expanded further the protection of Article 21, even while the decision ultimately allowed the eventual eviction of the pavement dwellers concerned. In the 1985 case of Olga Tellis v. Bombay Municipal Corporation (1985, 3 SCC 545), a Constitutional bench of the Supreme Court declared that "Eviction of Petitioners from their dwellings would result in the deprivation of their livelihood. Article 21 includes livelihood and so if the deprivation of livelihood is not effected by a reasonable procedure established by law, the same would be violative of article 21". The Court continued, stating: "The right under article 21 is the right to livelihood, because no person can live without the means of living i.e. the means of livelihood. If the right to livelihood is not treated as a part of the Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation....There is thus a close nexus between life and means of livelihood. And as such that which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life".⁴⁵

⁴² See, generally: Justice V.R. Krishna Iyer (1988) Law and the Urban Poor in India, B.R. Publishing Corporation, New Delhi.

⁴³ Upendra Baxi (1982) "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India" in Review of the International Commission of Jurists, vol. 29. On India generally, see M.G. Chitkara & P.L. Mehta Law and the Poor: A Socio-Legal Study, Ashish Publishing House, 1991, New Delhi.

⁴⁴ Francis Coralie v. the Union Territory of Delhi, (AIR 1981, SC 746).

⁴⁵ Olga Tellis v. Bombay Municipal Corp. (1985), SCC 545.

A year later in another case, the Supreme Court made it clear to the Delhi Development Authority (DDA) that even if a person is in unauthorized possession of land or has built on such lands without authority, he or she cannot be evicted without authority of law. The Court decided in this case (which involved the demolition of eight huts in the Jagamata leprosy ashram) that the DDA provide the evicted patients with alternative accommodation within a two week period.⁴⁶ Reaching a similar conclusion, in the case of Ram Prasad v. Chairman, Bombay Port Trust, the Supreme Court directed the relevant public authorities not to evict 50 slum dweller families unless alternative sites were provided for them.⁴⁷ In another housing rights case in 1990 the same Court gave a sweeping definition to the right to life clauses of the Indian Constitution, deciding that:

Basic needs of man have traditionally been accepted to be free--food, clothing and shelter. The right to life is guaranteed in any civilised society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in....For a human being [the right to shelter] has to be a suitable accommodation which would allow him to grow in every aspect-- physical, mental and intellectual....A reasonable residence is an indispensable necessity for fulfilling the Constitutional goal in the matter of development of man and should be taken as included in 'life' in article 21.⁴⁸

22. What Do Governments Tell the UN About Housing Rights?

The more than 140 Governments which have voluntarily bound themselves to promote and protect the rights contained in the Covenant on Economic, Social and Cultural Rights are required under articles 16 and 17 of the Covenant to submit reports "on the measures which they have adopted and the progress made in achieving the observance of the rights recognised" in the Covenant. This obligation (the failure to report by States parties) has been deemed as a violation of the Covenant) to report requires States to present an initial report within one year of ratifying the treaty, and thereafter once every five years.

In many respects, the reporting process forms an important cornerstone of the duties arising under international human rights standards, such as the Covenant. Although the process has often been criticised as overly time-consuming, inaccurate and unaccountable, the self-reporting process provides a solid basis upon which to determine whether and, if so, to which degrees States are complying with the norms established under the Covenant. States reports - which are public documents accessible to any citizen who wants to access them - also act as an official public record of how States parties perceive their legal obligations under international human rights law and how they have acted upon these.

States are required to answer 26 specific questions on housing rights under a series of guidelines developed by the Committee on Economic, Social and Cultural Rights to assist

⁴⁶ See: "DDA's demolition of leper huts illegal: SC" in Indian Express (New Delhi edition), 3 July 1986.

⁴⁷ Decided on 29th March 1989, AIR 89 SC, 1306.

⁴⁸ Shanti Star Builders v. Naryan Khimalal Totame & Ors (JT 1990 (1) S.C. 106, Civil Appeal No. 2598 of 1989).

governments with their reporting obligations. Some of the more prominent questions States are required to answer include the following:

Please provide detailed information about those groups within your society that are vulnerable and disadvantaged with regard to housing. Indicate, in particular:

- i) The number of homeless individuals and families;
 - ii) The number of individuals and families currently inadequately housed and without ready access to basic amenities such as water, heating (if necessary), waste disposal, sanitation facilities, electricity, postal services, etc. (in so far as you consider these amenities relevant in your country). Include the number of people living in overcrowded, damp, structurally unsafe housing or other conditions which affect health;
 - iii) The number of persons currently classified as living in 'illegal' settlements or housing;
 - iv) The number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction;
 - v) The number of persons whose housing expenses are above any government-set limit of affordability, based upon ability to pay or as a ratio of income;
 - vi) The number of persons on waiting lists for obtaining accommodation, the average length of waiting time and measures taken to decrease such lists as well as to assist those on such lists in finding temporary housing;
 - vii) The number of persons in different types of housing tenure by: social or public housing; private rental sector; owner-occupiers; 'illegal' sector; and others.
- c) Please provide information on the existence of any laws affecting the realisation 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 fulfilment of the right to housing;
 - ix) Legislation restricting speculation on housing or property, particularly when such speculation has a negative impact on the fulfilment 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.
- d) Please provide information on all other measures taken to fulfil the right to housing, including:
- i) Measures taken to encourage 'enabling strategies' whereby local community-based organizations and the 'informal sector' can build housing and related services. Are such organizations free to operate? Do they receive Government funding?;
 - ii) Measures taken by the State to build housing units and to increase other construction of affordable rental housing;
 - iii) Measures taken to release unutilized, under-utilized or mis-utilized land;
 - iv) Financial measures taken by the State including details of the budget of the Ministry of Housing or other relevant Ministry as a percentage of the national budget;
 - v) Measures taken to ensure that international assistance for housing and human settlements is used to fulfil the needs of the most disadvantaged groups;
 - vi) Measures taken to encourage the development of small and intermediate urban centres, especially at the rural level;
 - vii) Measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics, World Fairs, conferences, etc.), 'beautiful city' campaigns, etc., which guarantee protection from eviction or guarantee rehousing based on mutual agreement, by any persons living on or near to affected sites.
- e) During the reporting period, have there been any changes in the national policies, laws and practices negatively affecting the right to adequate housing?
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Annexes

1. International Legal Sources of Housing Rights

UNIVERSAL DECLARATION ON HUMAN RIGHTS (1948), adopted and proclaimed by United Nations General Assembly resolution 217A (III) 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.*

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966), adopted by United Nations General Assembly (UNGA) resolution 2200A(XXI), 16 December 1966, entered into force on 3 January 1976. Article 11(1) states:

*The States Parties to the present Covenant recognise 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 realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.*

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966), adopted by United Nations General Assembly (UNGA) resolution 2200A(XXI), 16 December 1966, entered into force on 3 January 1976. Articles 12 & 17 state:

*(1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and **freedom to choose his residence**. (Art. 12)*

....

- (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, **home** or correspondence, nor to unlawful attacks on his honour and reputation.*
- (2) Everyone has the right to the protection of the law against such interference or attacks. (Art. 17).*

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.*

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**.*

EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (1950), adopted in Rome on 4 November 1950, entered into force on 3 September 1953.

Article 8(1):

*Everyone has the **right to respect for his private and family life, his home and his correspondence.***

Article 1 of Protocol No. 1:

*(1) Every natural or legal person is entitled to the **peaceful enjoyment of his possessions**. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

(2) The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2(1) of Protocol No. 4:

*Everyone lawfully within the territory of a State shall, within that territory, have **the right to liberty of movement and freedom to choose his residence.***

THE REVISED EUROPEAN SOCIAL CHARTER (1996), adopted in Strasbourg on 3 May 1996.

Article 31:

*With a view to ensuring the effective exercise of **the right to housing**, the parties undertake to take measures designed to:*

- (1) **prevent and reduce homelessness with a view to its gradual elimination;***
- (2) **promote access to housing of an adequate standard;***
- (3) **make the price of housing accessible to those without adequate resources***

Article 16:

With a view to ensuring the necessary conditions for the full development of the family, which is the fundamental unit of society, the Contracting Parties undertake to

*promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, **provision of family housing**, benefits for the newly married, and other appropriate means.*

Article 19(4):

*With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting States undertake...(4) to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect to the following matters...(c) **accommodation**.*

Article 4 of the Additional Protocol to the European Social Charter, adopted on 5 October 1988 states:

*With a view to ensuring the effective exercise of the right of elderly persons to social protection, the States Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular....to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of: **provision of housing suited to their needs and their states of health or of adequate support for adapting their housing**....[and] to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.*

Organization of American States (OAS)

CHARTER OF THE ORGANIZATION OF AMERICAN STATES (1948), adopted in Bogota on 30 April 1948. Article 31(k) states:

To accelerate their economic social development, in accordance with their own methods and procedures and within the framework of the democratic principles and the institutions of the Inter-American System, the Member States agree to dedicate every effort to achieve the following goals...(k) Adequate housing for all sectors of the population.

AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN (1948), adopted by resolution (XXX) at the Ninth International Conference of American States at Bogota on 1948. Articles 8, 11 and 23 state:

(8) Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

*(11) Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, **housing** and medical care to the extent permitted by public and community resources.*

(23) Every person has the right to own such property as meets the essential needs of decent living and helps maintain the dignity of the individual and of the home.

ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1988), adopted on 17 November 1988 in San Salvador, El Salvador at the Eighteenth Regular Session of the General Assembly. Article 11 states:

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.

2. GENERAL COMMENT NO. 4 ON THE RIGHT TO ADEQUATE HOUSING

**** (Editor: please change footnotes in this section to start with 1, instead of 49)****

GENERAL COMMENT NO. 4 (1991) THE RIGHT TO ADEQUATE HOUSING (ART. 11(1) OF THE COVENANT), adopted by the UN Committee on Economic, Social and Cultural Rights on 12 December 1991.

1. Pursuant to article 11(1) of the Covenant, States parties "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 right to adequate housing which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979 the Committee, and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third and fourth sessions.⁴⁹ In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987), including the Global Strategy for Shelter to the year 2000 endorsed by the General Assembly.⁵⁰ The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.⁵¹

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing⁵², article 11(1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.

4. Despite the fact the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11(1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. Worldwide, the United Nations estimates that there are over 100 million persons homeless and over 1 billion inadequately housed.⁵³ There is no indication that this

49 E/C.12/1990/3, paras. 281-285

50 A/43/8/Add.1; General Assembly resolution 42/191, annex.

51 Commission on Human Rights resolutions 1986/36 and 1987/22; E/CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137-139; and see also Sub-Commission resolution 1991/26.

52 See, for example, article 25(1) of the Universal Declaration on Human Rights, article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14(2) of the International Convention on the Elimination of All Forms of Discrimination Against Women, article 27(3) of the Convention on the Rights of the Child, article 10 of the Declaration on Social Progress and Development, section III (8) of the UN Vancouver Declaration on Human Settlements (1976), article 8(1) of the Declaration on the Right to Development, and International Labour Organization Recommendation No. 115 on Workers Housing (1961).

53 A/43/8/Add.1.

number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

6. The right to adequate housing applies to everyone. While reference to "himself and his family" reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitation upon the applicability of the right to individuals or to female-headed households, or other such groups. Thus, the concept of "family" must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2(2) of the Covenant, not be subject to any form of discrimination.

7. In the Committee's view the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. Thus, "inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that housing rights should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11(1) must be read as referring not to housing tout court but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means....adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities--all at a reasonable cost.⁵⁴

8. Thus the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute "adequate housing" for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) Legal Security of Tenure:

54 *ibid*, para. 5.

Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) Availability of Services, Materials, Facilities and Infrastructure:

An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency services;

(c) Affordable:

Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability tenants should be protected from unreasonable rent levels or rent increases by appropriate means. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) Habitable:

Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the "Health Principles of Housing" prepared by the World Health Organization (WHO) which view housing as the environmental factor most frequently associated with disease conditions in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) Accessibility:

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central

policy goal, Discernable governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) Location:

Adequate housing must be in a location which allows access to employment options, health care services, schools, child care centers and other social facilities. This is both true in large cities and in rural areas where the temporal and financial costs of getting to and from places of work can place excessive demands upon the budgets of poor households, Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) Culturally Adequate:

The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed and that they should ensure, *inter alia*, modern technological facilities, as appropriate.

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom to choose one's residence and the right to participate in public decision-making is indispensable if the right to adequate housing is to be realised and maintained by all groups in society. Similarly, the right not be subjected to arbitrary interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to housing.

10. Regardless of the state of development of any country, there are certain steps which must be taken immediately. As recommended in the Global Shelter Strategy and in other international analyses, many of the measures required to promote the right to housing require only abstention by the Government from certain practices and a commitment to facilitate "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11(1), 22 and 23 of the Covenant, and that the Committee is informed thereof.

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement in living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the committee in its General Comment No. 2, despite externally caused problems, the obligations found in the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus

appear to the Committee that 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 be inconsistent with the obligations found in the Covenant.

12. While the most appropriate means for achieving the full realisation of the right to adequate housing will inevitably vary significantly from one State party to another, the Covenant clearly requires that each State party take whatever steps are necessary for that purpose. This will almost invariably require the adoption of a national housing strategy which, as stated in the Global Shelter Strategy, "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures" (para. 32). Both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives. Further, steps should be taken to ensure co-ordination between ministries, regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy and so forth) with the obligation arising from article 11 of the Covenant.

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11(1) it must determine, *inter alia*, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised reporting guidelines adopted by the Committee⁵⁵ emphasize the need to "provide detailed information about those groups within society that are vulnerable and disadvantaged with regard to housing". They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low-income groups.

14. 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. The promotion by States parties of "enabling strategies", combined with a full commitment to obligations concerning the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

15. Many of the measures that will be required will involve resource allocations and policy initiatives of a general kind. Nevertheless, the role of formal legislative and administrative measures should not be underestimated in this context. The Global Shelter Strategy (paras. 66-67) has drawn attention to the type of measures that might be taken in this regard and to their importance.

55 E/C.12/1991/1.

16. In some States, the right to adequate housing is constitutionally entrenched. In such cases, the Committee is interested in learning of the legal and practical significance of such an approach. Details of specific cases and of other ways in which entrenchment has proved useful should thus be provided.

17. The Committee 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:

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

(b) legal procedures seeking compensation following an illegal eviction;

(c) 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;

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

(e) 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.

18. In this regard, the Committee considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

19. Finally, article 11 (1) concludes with the obligation of States parties to "recognize the essential importance of international cooperation based on free consent." Traditionally, less than 5 percent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial portion of financing is devoted to creating conditions leading to as higher number of persons being adequately housed. International Financial Institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

3. GENERAL COMMENT NO. 7 (1997) (adopted 16 May 1997)

The right to adequate housing (Art. 11 (1) of the Covenant): forced evictions (UN doc. E/C.12/1997/4)

1. In its General Comment No.4 (1991), the Committee observed that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirements of the Covenant. Having considered a significant number of reports of forced evictions in recent years, including instances in which it has determined that the obligations of States Parties were being violated, the Committee is now in a position to seek to provide further clarification as to the implications of such practices in terms of the obligations contained in the Covenant.

2. The international community has long recognised that the issue of forced evictions is a serious one. In 1976 the Vancouver Declaration on Human Settlements noted that “major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made”.¹ In the 1988 Global Strategy for Shelter to the Year 2000, the General Assembly recognised the “fundamental obligation (of Governments) to protect and improve houses and neighbourhoods, rather than damage or destroy them”.² Agenda 21 stated that “people should be protected by law against unfair eviction from their homes or land”.³ In the Habitat Agenda Governments committed themselves to “protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided”.⁴ The Commission on Human Rights has also indicated that “forced evictions are a gross violation of human rights”.⁵ However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.

¹ Vancouver Declaration on Human Settlements, (1976) Sec. III (8).

² General Assembly resolution 43/181, Annex, Point 13.

³ Agenda 21, Chapter 7.9 (b).

⁴ Habitat Agenda, para. 40 (n).

⁵ Commission on Human Rights resolution 1993/77, para.1.

3. The use of the term “forced evictions” is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to “forced evictions” is a tautology, while others have criticised the expression “illegal evictions” on the ground that it assumes that the relevant law provides adequate protection to the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term “unfair evictions” is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to “forced evictions” primarily since all suggested alternatives also suffer from many such defects.

4. The term “forced evictions” as used throughout this General Comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Human Rights Covenants.

5. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelation and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

6. Although the practice of forced evictions might appear to arise primarily in heavily populated urban areas, it also takes place in relation to forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements. In all of these contexts, the right to adequate housing and not to be subject to forced evictions may be violated through a wide range of acts or omissions attributable to States Parties. Even in situations where it may be necessary to impose limitations on such a right, full compliance with Article 4 of the Covenant is required so that any limitations imposed must be “determined by law only in so far as this may be compatible with the nature of these rights [i.e. economic, social and cultural] and solely for the purpose of promoting the general welfare in a democratic society.”

7. Many instances of forced evictions are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.

8. Other instances of forced evictions occur in the name of development. They might be carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games.

9. In essence, the obligations of States Parties to the Covenant in relation to forced evictions are based on Article 11(1), read in conjunction with other relevant provisions. In

particular, Article 2(1) obliges States to use “all appropriate means” to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference to Article 2(1) to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in para. 3 above). Moreover, this approach is reinforced by Article 17(1) of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognises, *inter alia*, the right to be protected against “arbitrary or unlawful interference” with one’s home. It is to be noted that the State’s obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

10. Article 2(1) of the Covenant requires States Parties to use “all appropriate means”, including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No.3 (1991) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply in relation to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards their government greatly reducing their responsibilities in the housing sector, States Parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties should therefore review relevant legislation and policies to ensure that these are compatible with the obligations arising from the right to adequate housing and to repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

11. Women, children, youth, older persons, indigenous peoples, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced evictions. Women in all groups are especially vulnerable given the extent to statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of Articles 2(2) and 3 of the Covenant impose an additional obligation upon governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no forms of discrimination are involved.

12. Where some evictions may be justifiable, such as in the case of the persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that those evictions are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.

13. Forced evictions and house demolitions as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined within the 1949 Geneva Conventions and 1977 Protocols which relate to

prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced evictions.

14. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with affected persons, with a view to avoiding, or at least minimising, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States Parties shall also see to it that all individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2(3) of the International Covenant on Civil and Political Rights which requires States Parties to ensure “an effective remedy” for persons whose rights have been violated and the obligation upon the “competent authorities (to) enforce such remedies when granted”.

15. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall General Comment 16 by the Human Rights Committee, relating to Article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person’s home can only take place “in cases envisaged by the law”. The Committee observed that the law “should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances”. The Committee also indicated that “relevant legislation must specify in details the precise circumstances in which such interferences may be permitted”.

16. Appropriate procedural protection and due process are essential aspects of all human rights but it is especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognised in both International Human Rights Covenants. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

17. Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

18. The Committee is aware that various development projects financed by international agencies within the territories of State Parties have resulted in forced evictions. In this regard, the Committee recalls its General Comment No.2 (1990) which states, *inter alia*, that “international agencies should scrupulously avoid involvement in projects which, for example ... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of person without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account”.⁶

19. Some institutions, such as the World Bank and the Organisation for Economic Co-operation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale and human suffering associated with the practice of forced eviction. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, in so far as they reflect the obligations contained in the Covenant, on the part of both the agencies themselves and by States Parties to the Covenant is essential. The Committee recalls in this respect that statement in the Vienna Declaration and Programme of Action to the effect that: “while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognised human rights” (para. 10).

20. In accordance with the guidelines adopted by the Committee for reporting, State Parties are requested to provide various types of information pertaining directly to the practice of forced evictions. This includes information relating to (a) the “number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction”; (b) “legislation concerning the rights of tenants to security of tenure, to protection from eviction” and (c) “legislation prohibiting any form of eviction”.⁷

21. Information is also sought as to “measures taken during, *inter alia*, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events (Olympics and other sporting competitions, exhibitions, conferences, etc.) ‘beautiful city’ campaigns, etc. which guarantee protection from eviction or guarantee rehousing based on mutual consent, by any persons living on or near to affected sites”.⁸ Despite these provision, few States Parties have included the requisite information in their reports to the Committee. The Committee, therefore, wishes to emphasise in this regard the importance it attaches to the receipt of such information.

22. Some States Parties have indicated that information of this nature is not available. The Committee recalls that effective monitoring of the right to adequate

⁶ UN doc. E/1990/23, paras. 6 and 8.

⁷ E/C.12/1990/8, Annex IV.

⁸ Id.

housing, either by the Government concerned or by the Committee, is not possible in the absence of the collection of appropriate data and would request all States Parties to ensure that the necessary data is collected and is reflected in the reports submitted by them under the Covenant.

4. Maastricht Guidelines on Violations on Economic, Social and Cultural Rights (1997)

I The significance of economic, social and cultural rights

1. Since the Limburg Principles were adopted in 1986, the economic and social conditions have declined at alarming rates for over 1.6 billion people, while they have advanced also at a dramatic pace for more than a quarter of the world's population.⁵⁶ The gap between rich and poor has doubled in the last three decades, with the poorest fifth of the world's population receiving 1.4% of the global income and the richest fifth 85%. The impact of these disparities on the lives of people - especially the poor - is dramatic and renders the enjoyment of economic, social and cultural rights illusory for a significant portion of humanity.

2. Since the end of the Cold War, there has been a trend in all regions of the world to reduce the role of the state and to rely on the market to resolve problems of human welfare, often in response to conditions generated by international and national financial markets and institutions and in an effort to attract investments from the multinational enterprises whose wealth and power exceed that of many states. It is no longer taken for granted that the realisation of economic, social and cultural rights depends significantly on action by the state, although, as a matter of international law, the state remains ultimately responsible for guaranteeing the realisation of these rights. While the challenge of addressing violations of economic, social and cultural rights is rendered more complicated by these trends, it is more urgent than ever to take these rights seriously and, therefore, to deal with the accountability of governments for failure to meet their obligations in this area.

3. There have also been significant legal developments enhancing economic, social and cultural rights since 1986, including the emerging jurisprudence of the Committee on Economic, Social and Cultural Rights and the adoption of instruments, such as the revised European Social Charter of 1996 and the Additional Protocol to the European Charter Providing for a System of Collective Complaints, and the San Salvador Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988. Governments have made firm commitments to address more effectively economic, social and cultural rights within the framework of seven UN World Summits conferences (1992-1996). Moreover, the potential exists for improved accountability for violations of economic, social and cultural rights through the proposed Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. Significant developments within national civil society movements and regional and international NGOs in the field of economic, social and cultural rights have taken place.

4. It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, states are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights.

56 UNDP, Human Development Report 1996, para 29.

5. As in the case of civil and political rights, the failure by a State Party to comply with a treaty obligation concerning economic, social and cultural rights is, under international law, a violation of that treaty. Building upon the Limburg Principles⁵⁷, the considerations below relate primarily to the International Covenant on Economic, Social and Cultural Rights (hereinafter "the Covenant"). They are equally relevant, however, to the interpretation and application of other norms of international and domestic law in the field of economic, social and cultural rights.

II The meaning of violations of economic, social and cultural rights

Obligations to respect, protect and fulfil

6. Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States: the obligations to respect, protect and fulfil. Failure to perform any one of these three obligations constitutes a violation of such rights. The obligation to *respect* requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions. The obligation to *protect* requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work. The obligation to *fulfil* requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation.

Obligations of conduct and of result

7. The obligations to respect, protect and fulfil each contain elements of obligation of conduct and obligation of result. The obligation of conduct requires action reasonably calculated to realize the enjoyment of a particular right. In the case of the right to health, for example, the obligation of conduct could involve the adoption and

⁵⁷ The relevant Limburg Principles are the following:

70. A failure by a State party to comply with an obligation contained in the Covenant is, under international law, a violation of the Covenant.

71. In determining what amounts to a failure to comply, it must be borne in mind that the Covenant affords to a State party a margin of discretion in selecting the means for carrying out its objects, and that factors beyond its reasonable control may adversely affect its capacity to implement particular rights.

72. A State party will be in violation of the Covenant, *inter alia*, if:

- it fails to take a step which it is required to take by the Covenant;
- it fails to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right;
- it fails to implement without delay a right which it is required by the Covenant to provide immediately;
- it wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- it applies a limitation to a right recognized in the Covenant other than in accordance with the Covenant;
- it deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*;
- it fails to submit reports as required under the Covenant.

73. In accordance with international law each State party to the Covenant has the right to express the view that another State party is not complying with its obligations under the Covenant and to bring this to the attention of that State party. Any dispute that may thus arise shall be settled in accordance with the relevant rules of international law relating to the peaceful settlement of disputes.

The full text of the Limburg Principles was published in:

UN Doc. E/CN.4/1987/17, Annex; Human Rights Quarterly, Vol. 9. pp. 122-135 (1987); Review of the International Commission of Jurists, Nr 37 (December 1986), pp. 43-55.

implementation of a plan of action to reduce maternal mortality. The obligation of result requires States to achieve specific targets to satisfy a detailed substantive standard. With respect to the right to health, for example, the obligation of result requires the reduction of maternal mortality to levels agreed at the 1994 Cairo International Conference on Population and Development and the 1995 Beijing Fourth World Conference on Women.

Margin of discretion

8. As in the case of civil and political rights, States enjoy a margin of discretion in selecting the means for implementing their respective obligations. State practice and the application of legal norms to concrete cases and situations by international treaty monitoring bodies as well as by domestic courts have contributed to the development of universal minimum standards and the common understanding of the scope, nature and limitation of economic, social and cultural rights. The fact that the full realisation of most economic, social and cultural rights can only be achieved progressively, which in fact also applies to most civil and political rights, does not alter the nature of the legal obligation of States which requires that certain steps be taken immediately and others as soon as possible. Therefore, the burden is on the State to demonstrate that it is making measurable progress toward the full realisation of the rights in question. The State cannot use the "progressive realisation" provisions in article 2 of the Covenant as a pretext for non-compliance. Nor can the State justify derogations or limitations of rights recognised in the Covenant because of different social, religious and cultural backgrounds.

Minimum core obligations

9. Violations of the Covenant occur when a State fails to satisfy what the Committee on Economic, Social and Cultural Rights has referred to as "a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights [...]. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, violating the Covenant."⁵⁸ Such minimum core obligations apply irrespective of the availability of resources of the country concerned or any other factors and difficulties.

Availability of resources

10. In many cases, compliance with such obligations may be undertaken by most States with relative ease, and without significant resource implications. In other cases, however, full realisation of the rights may depend upon the availability of adequate financial and material resources. Nonetheless, as established by Limburg Principles 25-28, and confirmed by the developing jurisprudence of the Committee on Economic, Social and Cultural Rights, resource scarcity does not relieve States of certain minimum obligations in respect of the implementation of economic, social and cultural rights.

State policies

58 See Committee on Economic, Social and Cultural Rights, *General Comment No. 3, (Fifth session, 1990)*, UN doc. E/1991/23, Annex III para. 10.

11. A violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result. Furthermore, any discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of the Covenant.

Gender discrimination

12. Discrimination against women in relation to the rights recognised in the Covenant, is understood in light of the standard of equality for women under the Convention on the Elimination of All Forms of Discrimination Against Women. That standard requires the elimination of all forms of discrimination against women including gender discrimination arising out of social, cultural and other structural disadvantages.

Inability to comply

13. In determining which actions or omissions amount to a violation of an economic, social or cultural right, it is important to distinguish the inability from the unwillingness of a State to comply with its treaty obligations. A State claiming that it is unable to carry out its obligation for reasons beyond its control has the burden of proving that this is the case. A temporary closure of an educational institution due to an earthquake, for instance, would be a circumstance beyond the control of the State, while the elimination of a social security scheme without an adequate replacement programme could be an example of unwillingness by the State to fulfil its obligations.

Violations through acts of commission

14. Violations of economic, social and cultural rights can occur through the direct action of States or other entities insufficiently regulated by States. Examples of such violations include:

- (a) The formal removal or suspension of legislation necessary for the continued enjoyment of an economic, social and cultural right that is currently enjoyed;
- (b) The active denial of such rights to particular individuals or groups, whether through legislated or enforced discrimination;
- (c) The active support for measures adopted by third parties which are inconsistent with economic, social and cultural rights;
- (d) The adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights, unless it is done with the purpose and effect of increasing equality and improving the realisation of economic, social and cultural rights for the most vulnerable groups;
- (e) The adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed;
- (f) The calculated obstruction of, or halt to, the progressive realisation of a right protected by the Covenant, unless the State is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or *force majeure*;

- (g) The reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure minimum subsistence rights for everyone.

Violations through acts of omission

15. Violations of economic, social, cultural rights can also occur through the omission or failure of States to take necessary measures stemming from legal obligations. Examples of such violations include:

- (a) The failure to take appropriate steps as required under the Covenant;
- (b) The failure to reform or repeal legislation which is manifestly inconsistent with an obligation of the Covenant;
- (c) The failure to enforce legislation or put into effect policies designed to implement provisions of the Covenant;
- (d) The failure to regulate activities of individuals or groups so as to prevent them from violating economic, social and cultural rights;
- (e) The failure to utilize the maximum of available resources towards the full realisation of the Covenant;
- (f) The failure to monitor the realisation of economic, social and cultural rights, including the development and application of criteria and indicators for assessing compliance;
- (g) The failure to remove promptly obstacles which it is under a duty to remove to permit the immediate fulfilment of a right guaranteed by the Covenant;
- (h) The failure to implement without delay a right which it is required by the Covenant to provide immediately;
- (i) The failure to meet a generally accepted international minimum standard of achievement, which is within its powers to meet;
- (j) The failure of a State to take into account its international legal obligations in the field of economic, social and cultural rights when entering into bilateral or multilateral agreements with other States, international organizations or multinational corporations.

III Responsibility for violations

State responsibility

16. The violations referred to in section II are in principle imputable to the State within whose jurisdiction they occur. As a consequence, the State responsible must establish mechanisms to correct such violations, including monitoring investigation, prosecution, and remedies for victims.

Alien domination or occupation

17. Under circumstances of alien domination, deprivations of economic, social and cultural rights may be imputable to the conduct of the State exercising effective control over the territory in question. This is true under conditions of colonialism, other forms of alien domination and military occupation. The dominating or occupying power bears responsibility for violations of economic, social and cultural rights.

There are also circumstances in which States acting in concert violate economic, social and cultural rights.

Acts by non-state entities

18. The obligation to protect includes the State's responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-state actors.

Acts by international organizations

19. The obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively. It is particularly important for States to use their influence to ensure that violations do not result from the programmes and policies of the organizations of which they are members. It is crucial for the elimination of violations of economic, social and cultural rights for international organizations, including international financial institutions, to correct their policies and practices so that they do not result in deprivation of economic, social and cultural rights. Member States of such organizations, individually or through the governing bodies, as well as the secretariat and nongovernmental organizations should encourage and generalize the trend of several such organizations to revise their policies and programmes to take into account issues of economic, social and cultural rights, especially when these policies and programmes are implemented in countries that lack the resources to resist the pressure brought by international institutions on their decision-making affecting economic, social and cultural rights.

IV Victims of violations

Individuals and groups

20. As is the case with civil and political rights, both individuals and groups can be victims of violations of economic, social and cultural rights. Certain groups suffer disproportionate harm in this respect such as lower-income groups, women, indigenous and tribal peoples, occupied populations, asylum seekers, refugees and internally displaced persons, minorities, the elderly, children, landless peasants, persons with disabilities and the homeless.

Criminal sanctions

21. Victims of violations of economic, social and cultural rights should not face criminal sanctions purely because of their status as victims, for example, through laws criminalizing persons for being homeless. Nor should anyone be penalized for claiming their economic, social and cultural rights.

V Remedies and other responses to violations

Access to remedies

22. Any person or group who is a victim of a violation of an economic, social or cultural right should have access to effective judicial or other appropriate remedies at both national and international levels.

Adequate reparation

23. All victims of violations of economic, social and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition.

No official sanctioning of violations

24. National judicial and other organs must ensure that any pronouncements they may make do not result in the official sanctioning of a violation of an international obligation of the State concerned. At a minimum, national judiciaries should consider the relevant provisions of international and regional human rights law as an interpretive aide in formulating any decisions relating to violations of economic, social and cultural rights.

National institutions

25. Promotional and monitoring bodies such as national ombudsman institutions and human rights commissions, should address violations of economic, social and cultural rights as vigorously as they address violations of civil and political rights.

Domestic application of international instruments

26. The direct incorporation or application of international instruments recognizing economic, social and cultural rights within the domestic legal order can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases.

Impunity

27. States should develop effective measures to preclude the possibility of impunity of any violation of economic, social and cultural rights and to ensure that no person who may be responsible for violations of such rights has immunity from liability for their actions.

Role of the legal professions

28. In order to achieve effective judicial and other remedies for victims of violations of economic, social and cultural rights, lawyers, judges, adjudicators, bar associations and the legal community generally should pay far greater attention to these violations in the exercise of their professions, as recommended by the International Commission of Jurists in the Bangalore Declaration and Plan of Action of 1995.⁵⁹

Special rapporteurs

29. In order to further strengthen international mechanisms with respect to preventing, early warning, monitoring and redressing violations of economic, social and cultural rights, the UN Commission on Human Rights should appoint thematic Special Rapporteurs in this field.

New standards

30. In order to further clarify the contents of States obligations to respect, protect and fulfil economic, social and cultural rights, States and appropriate international

59 Reproduced in: ICJ Review No. 55 (Dec. 1995), pp. 219-227.

bodies should actively pursue the adoption of new standards on specific economic, social and cultural rights, in particular the right to work, to food, to housing and to health.

Optional protocols

31. The optional protocol providing for individual and group complaints in relation to the rights recognised in the Covenant should be adopted and ratified without delay. The proposed optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women should ensure that equal attention is paid to violations of economic, social and cultural rights. In addition, consideration should be given to the drafting of an optional complaints procedure under the Convention on the Rights of the Child.

Documenting and monitoring

32. Documenting and monitoring violations of economic, social and cultural rights should be carried out by all relevant actors, including NGOs, national governments and international organizations. It is indispensable that the relevant international organizations provide the support necessary for the implementation of international instruments in this field. The mandate of the United Nations High Commissioner for Human Rights includes the promotion of economic, social and cultural rights and it is essential that effective steps be taken urgently and that adequate staff and financial resources be devoted to this objective. Specialized agencies and other international organizations working in the economic and social spheres should also place appropriate emphasis upon economic, social and cultural rights as rights and, where they do not already do so, should contribute to efforts to respond to violations of these rights.

5. DRAFT INTERNATIONAL CONVENTION ON HOUSING RIGHTS⁶⁰

Preamble

Considering that adequate housing is essential to freedom, dignity, equality and security for everyone,

Recognising that the human right to adequate housing is recognised in law under various international human rights texts and treaties, including the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and many others,

Reaffirming that all economic, social, cultural, civil and political are indivisible and interdependent and are of equal importance and status under law;

Whereas the enjoyment of other human rights such as those to privacy, to respect for the home, to freedom of movement, to be free from discrimination, to environmental health, to security of person, to freedom of association, to equality before the law and other rights are indivisible from and indispensable to the realisation of the right to adequate housing;

Reaffirming that all governments are, to one degree or another, legally bound to respect, protect and ensure the housing rights and related rights of their populations;

Whereas the non-fulfilment of housing rights is a widespread and growing phenomenon and that no single country can claim to have satisfied in full their existing legal obligations arising out of the right to adequate housing,

Convinced of the need for more concrete measures to be taken by States in the sphere of housing rights,

Having resolved that all States must carry out renewed and effective efforts towards satisfying the housing rights of their citizens and other residents,

Section One: Rights and Entitlements

Article 1: Housing Rights for Everyone

1. All children, women and men have an enforceable right to adequate housing which is affordable, accessible and self-determined, and includes a right of access to a safe, affordable and secure place to live in peace and dignity.

Article 2: Non-discrimination

⁶⁰ Prepared by the UN Special Rapporteur on Housing Rights, August 1994 (E/CN.4/Sub.2/1994/20).

1. The right to adequate housing shall be exercised in an environment free from any form of discrimination. Discrimination based on level of income, gender, disability, race, ethnicity, creed, age, family status, sexual orientation, presence of children, receipt of welfare or public assistance, medical status, citizenship, employment status or social condition shall be prohibited by law.

2. Everyone shall have access to judicial or other effective means of enforcing laws designed to prevent all forms of discrimination.

Article 3: Gender Equality

1. The housing rights of women and men shall, in every respect, be equal in law and in practice.

Article 4: Chronically Ill-Housed Groups

1. The housing rights of chronically ill-housed groups and/or those with special housing requirements or those with difficulties acquiring adequate housing shall be accorded a measure of priority, in both the housing laws and policies of all governments.

2. Chronically ill-housed groups shall be defined as disabled persons, elderly persons, low-income groups, minority groups, persons with medical problems, refugees, youth, or any other individual or group of a similar nature.

Article 5: The Special Rights of the Homeless

1. Homeless individuals, couples or families have an enforceable right to the immediate provision by public authorities of adequate, self-contained and appropriate housing space. Hostels, emergency shelters or bed & breakfast accommodation shall constitute insufficient measures under the terms of this article.

2. Any homeless individual, couple or family refused the provision of housing space by public authorities, for whatever reason, shall have an automatic right to appeal such decisions.

Article 6: Security of Tenure

1. Everyone has the enforceable right to security of tenure over their housing, protecting all persons from, *inter alia*, forced or arbitrary eviction, expropriation or relocation, in the absence of an alternative acceptable to those affected, notwithstanding the type of housing inhabited.

2. The right to security of tenure shall mean that all children, women and men have a right to a home and to a safe and healthy environment. Every person shall have a right to a home free from violence, threat of violence or other form of harassment, including the right to respect of the home.

3. Every person shall be protected under law from all forms of economically motivated evictions through sudden or excessive rent increases, for reasons of profit, for reasons of speculation or for reasons that fail to recognize the rights of the tenants.

4. This article shall apply to everyone, including persons, families and groups including squatters, and those with shifting housing circumstances, in particular, nomads, travellers and Romani (gypsies).

5. Any person, institution, legal subject, public body or any other entity which violates any clause of this article shall be held criminally liable under law.

Article 7: Access to Services

1. Everyone has a right to access to safe drinking water, electricity and lighting, heating (if necessary), sanitation and washing facilities, cooking facilities, food storage, ventilation and drainage.

2. Everyone has a right to community services, including garbage removal, health care facilities, employment opportunities, schools, reasonably-priced public transport, child care, and emergency fire and ambulance services.

Article 8: Affordability

1. Everyone has a right to affordable housing. Steps must be taken by governments to guarantee that personal or household financial costs associated with housing are not allowed to reach a level which in any way threatens the attainment and satisfaction of other basic needs.

2. Everyone who has a proven need, shall have a right to social subsidies as a means of ensuring the right to affordable housing.

Article 9: Habitability

1. Everyone has a right to safe, healthy and habitable housing, including adequate space, privacy and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors.

2. Any person who alleges her or his rights under this article to have been violated shall have access to administrative and legal remedies.

Article 10: Accessibility

1. Everyone has a right to accessible housing. This right applies especially to those with special housing needs, including but not limited to mentally and physically disabled persons, the elderly, the terminally ill, HIV-positive individuals, persons with persistent medical problems and children.

2. Everyone has a right to obtain subsidies for any necessary housing modifications required to ensure accessibility.

Article 11: Housing Location

1. Everyone has a right to a housing location which does not in any way threaten the enjoyment of any of the rights in this Convention or threaten concomitant rights to the highest attainable level of health.
2. Occupants of housing built on or near to sources of pollution shall have the right to claim compensation from public authorities, who shall have the legal duty to decontaminate the area and/or to reduce pollution sources to levels which do not in any way threaten public health.

Article 12: Participation and Control

1. Everyone has a right to participate fully and democratically in any and all decisions affecting national or local policies concerning their housing. These include design, development, neighbourhood renovation or improvement, management policies and services.
2. Everyone has a right to control over their housing, whether publicly or privately owned. Every person shall have the right to influence decisions affecting the housing in which they live and to adapt one's residence in a manner reflecting personal wishes.
3. Everyone has a right to form, join and/or participate in the lawful activities of any association for the promotion and protection of her or his interests, whether political, economic, social or cultural. No tenant shall be subjected to harassment or eviction for exercising this right.

Article 13: Information

1. Everyone has a right to any and all information, whether private or public, concerning their housing. This includes information concerning people's legal housing rights and other housing laws, housing supply, the location of unused housing or housing for rent, environmental hazards in close proximity to housing, and so forth.
2. The proponents of any project, plan, programme or envisioned legislation impacting in any manner upon the housing circumstances of any person shall be required by law to provide all available information to affected persons and communities in a timely and comprehensive fashion.

Article 14: Housing Finance

1. Everyone has a right to fair housing finance and credit on reasonable and equitable terms. All persons, notwithstanding any distinction, shall have an equal right to obtain such finance or credit towards the enjoyment of their housing rights.
2. This article applies equally to owner-occupiers and tenants. Housing finance should not disproportionately benefit individuals with mortgages.

Article 15: Legal Remedies

1. Everyone has a right to effective and comprehensive legal remedies related to the rights and duties found in the present Convention, including the non-enjoyment of these rights.

Section Two: Governmental Obligations

Article 16: General Duties

1. States parties shall take all the necessary steps, in an appropriate and immediate manner, to ensure the housing rights of everyone, as addressed in articles 1-15 of the present Convention.

2. Governments shall utilize the maximum of their available resources towards satisfying these obligations

Article 17: Legislative Action

1. Governments shall adopt legislation giving full effect to the rights contained in the present Convention.

2. Such legislation shall enshrine legal protection from any infringement of any person's housing rights, by either public authorities or private persons.

Article 18: Legislative Review

1. Governments shall carry out a systematic process of legislative review of existing laws in order to bring these into conformity with the rights and duties contained in the present Convention.

2. Legislation found to be incompatible with the present Convention shall be appropriately revised, amended or repealed.

3. Input by citizens into the legislative review process shall be favorably considered by States parties.

Article 19: Monitoring and Evaluation

1. States parties shall regularly and comprehensively monitor and evaluate to degree to which the obligations and rights found in the present Convention are being observed.

2. An effective system of 'housing rights indicators' equally relevant to all States shall be developed, with a view to measuring accurately compliance with the present Convention and other existing legal duties concerning any aspect of housing rights.

3. Housing rights indicators shall be collected at regular intervals.

Article 20: Obligations to Respect

1. States parties have an obligation to respect fully the housing rights of everyone.

2. Governments must refrain from any act of any nature which intentionally prevents people from achieving their housing rights.

3. This article applies, in particular, but not exclusively to acts such as forced or arbitrary evictions, discrimination in the housing sphere, restrictions on rights to participation, equality of treatment and to enact laws which restrict the realisation of the right to adequate housing.

Article 21: Obligations to Ensure

1. States parties have an obligation to ensure the full realisation of the housing rights of everyone.

2. Governments must allocate amounts of public expenditure towards the overall satisfaction of the right to adequate housing, which accurately reflect society's housing demands and unfulfilled needs.

3. Governments agree to increase progressively public spending towards the full realisation for everyone of adequate housing. Such spending shall include the construction of new social housing units and the promotion and financial support for accessible and affordable housing schemes.

Article 22: Housing Supply

1. States parties shall guarantee that overall housing supply corresponds to housing requirements;

2. Governments shall regularly monitor the balance between housing supply and housing needs, with a view to adopting appropriate policies designed to create conditions wherein housing supply is consistently above housing requirements;

3. Governments must create conditions wherein a sufficient proportion of housing supply is reserved for housing homeless individuals and families;

4. Governments shall ensure that housing supplies are diverse and reflect the cultural attributes of all social groups living in any society and provide a degree of choice for dwellers as to where to choose the place of their residence.

Article 23: Housing Affordability

1. States parties shall ensure that housing is affordable to everyone.

2. Governments shall intervene in the housing market and the economy as a whole, with a view to creating conditions of society-wide affordable housing.

3. Governments must develop and adequately finance a system or systems of housing subsidies as one measure towards guaranteeing housing affordability.

Article 24: Housing Adequacy

1. States parties shall enshrine in law the rights of everyone to basic minimum standards of housing adequacy.
2. Governments will legally require all landlords, whether public, private or otherwise, to repair and maintain housing and its facilities, and to ensure housing adequacy in all dwellings.
3. Landlords of all rental premises, whether public or private, shall maintain the premises in a reasonable state of repair and fit for habitation from the perspective of human health, personal security and environmental protection.
4. Landlords will be required by law immediately to respond to and act upon any complaint from tenants based on inadequate housing conditions.
5. Governments shall refrain from evicting dwellers from homes, on the grounds that the dwelling in question is deemed to constitute inadequate housing.
6. Governments and/or landlords shall have a legal obligation, when renovating dwellings for which the temporary removal of the occupant(s) is required, to re-house the occupant during the renovation process and further to guarantee the occupants right to return to the renovated dwelling upon completion, at a rent which is not unreasonable increased as compared to the preexisting rent, irrespective of the nature of the renovation.

Article 25: Provision of Infrastructure and Services

1. States parties shall provide all necessary infrastructure and services to everyone, including drinking water, sewage, garbage removal, electricity, heating, energy for cooking and emergency fire and ambulance services, public transport, roads and other services in near proximity.

Article 26: Prevention of Speculation

1. States parties shall prevent speculation in the housing sphere by, inter alia, restricting property owners from leaving their properties empty and unutilized;
2. Governments shall develop appropriate legislative and other mechanisms designed to release unutilized housing space for habitation.
3. The occupation of unutilized dwellings, provided the dwelling in question has remained empty for six consecutive months will be accepted in law.

Article 27: Special Duties

1. States parties shall enact legislation and policies geared towards satisfying in full the special housing needs of disadvantaged and chronically ill-housed groups. Towards this end, Governments will earmark a significant proportion of public spending to realize the special housing needs of these groups.

Article 28: Provision of Judicial Remedies

1. States parties shall, under the present Convention and generally, establish judicial remedies for persons who allege their housing rights to have been infringed;
2. Such remedies shall provide access to courts, tribunals, administrative bodies or any other mechanism which guarantees an impartial and objective review of the case or complaint in question.

Article 29: Training and Education

1. States parties shall provide comprehensive training and education to all public officials concerning the existence of, and governmental obligations arising from, the human right to adequate housing;
2. Special training shall be given to civil servants employed by ministries whose policies have an impact on the full realisation of the right to adequate housing, in particular ministries of housing, environment, planning, social affairs and welfare;
3. Governments shall promote human rights education, including housing rights education within schools and universities, and through the media.

Article 30: International Obligations

1. States parties undertake to re-affirm their existing commitments under international human rights law, including the right to adequate housing. This applies, in particular to, obligations arising under the International Covenant on Economic, Social and Cultural Rights;
2. Governments undertake to support and promote additional and enhanced activities and mechanisms within the United Nations human rights bodies concerning the right to adequate housing;
3. Governments agree to inform one another and relevant United Nations bodies when any government is deemed to have carried out an act or omission in violation of the rights and obligations under the present Convention.

Article 31: International Co-operation

1. States parties shall regularly increase the proportion of international development assistance devoted to housing and human settlements in developing countries;
2. Governments agree not to carry out or support any policy, law, practice, project or programme which in any way, threatens or infringes the full realisation of housing rights in any other country.