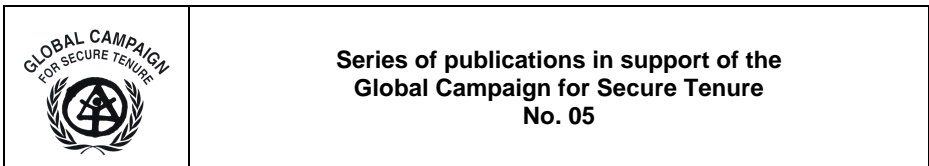


Housing rights legislation

Review of
international and national legal instruments

United Nations Housing Rights Programme
Report No. 1



United Nations Human Settlements Programme (UN-HABITAT)
Office of the High Commissioner for Human Rights (OHCHR)

Nairobi, 2002

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Cover design: Sukhjinder Bassan, UN-HABITAT, Nairobi

Cover photos credits: UN-HABITAT

Printing: UNON Printshop, Nairobi

UN-HABITAT (United Nations Human Settlements Programme)
Nairobi, 2002 (First published 2002, Second impression 2002)

HS / 638 / 01 E

ISBN 92-1-131628-6

ISBN 92-3-131664-2 (UNHRP report series)

Electronic versions of this and other publications on housing rights are available for download from the UNHRP section of the UN-HABITAT web-site (<http://www.unhabitat.org/unhrp/pub>). The electronic versions — in compiled HTML format, allowing complex text searches — require Microsoft Windows 98 or later; or Microsoft Windows 95 plus Microsoft Internet Explorer (version 4 or later).

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Foreword

“All human rights are universal, indivisible and interdependent and interrelated. ... [I]t is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

*Vienna Declaration and Programme of Action
1993 World Conference on Human Rights*

This research report has been prepared to promote global understanding of the linkages between housing and human rights. Its focus is on housing law and how it can be used by States and the international community to address the problems of homelessness, forced evictions and housing deprivation from a human rights perspective.

Housing rights are unmistakably part of international human rights law. The right to adequate housing is embedded in the Universal Declaration of Human Rights and major international human rights treaties such as the International Covenant on Economic, Social and Cultural Rights. In 1996, world leaders reaffirmed the right to adequate housing when adopting the Habitat Agenda at the Second United Nations Conference on Human Settlements. These instruments and declarations have shaped a global social contract designed to ensure access to a secure home for all people in all countries.

In a world where more than one billion people continue to live in inadequate housing conditions, the imperative of renewed attention to the realization of housing rights takes on added urgency. Under international human rights law, Governments have legal responsibilities to “take steps by all appropriate means” to ensure the full and progressive realization of the human right to adequate housing. Such domestic measures include, although are not limited to, legislative action.

This report illustrates that effective constitutional and legislative guarantees of the right to adequate housing are not only realistic but have already been adopted successfully in a number of countries with diverse legal, social, economic and cultural systems. The country examples and experiences presented in this report provide information and tools for policy makers and practitioners, on model legislation that identifies specific components of the right to adequate housing. They also illustrate the wider legal framework that is necessary to promote housing rights.

UN-HABITAT and OHCHR recently launched the United Nations Housing Rights Programme (UNHRP). It is a joint undertaking to promote further understanding of housing rights and to assist States and all partners to develop practical steps towards progressive realization of these rights. It is our hope that this report, the first in the UNHRP publication series, will build global awareness and contribute to further action by all our partners towards the realization of housing rights.



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Acknowledgements

Scott Leckie and Bret Thiele of the Centre on Housing Rights and Evictions (COHRE) prepared the draft that formed the basis for this report. Their collaboration and support is very much appreciated.

Selman Ergüden, Inge Jensen and Angela Hakezimana (all of UN-HABITAT) finalised the substantive content of the report. The two former developed the research design. Moreover, Selman Ergüden co-ordinated and supervised the activities of this project, while Inge Jensen finalised the structure and layout of the report.

Rio Hada and Margret Arambulo (of OHCHR) provided valuable insights, contributed to the research design and reviewed drafts throughout the research process. Miloon Kothari, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living appointed under the United Nations Commission on Human Rights, provided valuable advice and guidance.

Special thanks are due to the Government of Belgium for financial support, through their contribution to the Global Campaign for Secure Tenure. Without this financial contribution, this research project and the publishing of this report would not have been possible.

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List of acronyms and special terms

AIDS	Acquired Immuno-Deficiency Syndrome
American Convention	American Convention on Human Rights
American Declaration	American Declaration on the Rights and Duties of Man
CBO	Community-based organization
COHRE	Centre on Housing Rights and Evictions
Commission	United Nations Commission on Human Rights
European Commission	European Commission of Human Rights
European Convention	[European] Convention for the Protection of Human Rights and Fundamental Freedoms
European Court	European Court of Human Rights
General Comment No. 3	United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties obligations (Art. 2, para. 1 of the Covenant)
General Comment No. 4	United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4: The right to adequate housing (Art. 11 (1) of the Covenant)
General Comment No. 7	United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 7: The right to adequate housing (Art. 11 (1) of the Covenant): forced evictions
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
Inter-American Commission	Inter-American Commission on Human Rights
Inter-American Court	Inter-American Court on Human Rights

Limburg Principles	Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights
Maastricht Guidelines	Maastricht Guidelines on Violations of Economic, Social and Cultural Rights
NGO	Non-governmental organization
OAS	Organisation of American States
OAU	Organisation for African Unity
OHCHR	United Nations Office of the High Commissioner for Human Rights (until 1997 known as United Nations Centre for Human Rights)
Protocol 1 to the European Convention	Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms
Protocol of San Salvador	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights
Sub-Commission	United Nations Sub-Commission on the Promotion and Protection of Human Rights (until 1999 known as the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities)
UNCHS (Habitat)	United Nations Centre for Human Settlements (since 1 January 2002 known as UN-HABITAT)
UN-HABITAT	United Nations Human Settlements Programme (until 31 December 2001 known as UNCHS (Habitat))
UNHRP	United Nations Housing Rights Programme
Universal Declaration	Universal Declaration of Human Rights

Executive summary

1. This report examines and analyses housing rights within a broad spectrum – from international human rights principles and standards to how those principles and standards are recognised and implemented at the regional, national and local levels.

2. Chapter I, discusses housing rights as embodied in various international instruments and documents and as expressed by various entities, e.g. –

- the Universal Declaration of Human Rights (sub-chapter I.A);
- international covenants and conventions (sub-chapter I.B);
- General Comments of the Committee on Economic, Social and Cultural Rights (sub-chapter I.C);
- United Nations resolutions (sub-chapter I.D);
- other statements of the international community on housing rights (sub-chapter I.E);
- the work of the United Nations Office of the High Commissioner for Human Rights (OHCHR)¹ and the United Nations Human Settlements Programme (UN-HABITAT),² including their joint UNHRP (sub-chapter I.F); as well as
- other United Nations mechanisms (sub-chapter I.G).

3. Chapter II examines the legal obligations that States have with respect to housing rights under international law. The chapter includes a discussion of the terminology used (sub-chapter II). Moreover, it refutes the notion that housing rights imply a legal obligation for States to build housing for its entire population (sub-chapter II.B). Instead, it provides an overview of the real legal obligations of States with regard to housing rights (sub-chapter II.C).

4. Chapter III illustrates the need for States to incorporate international human rights standards, principles and norms into their respective domestic legal regimes. It also indicates how, with regard to certain international instruments, this incorporation is obligatory for States Parties.

5. Chapter IV contains the main discussion of national housing rights legislation. The examples presented were chosen because they offer illustrative examples of how States have adopted constitutional clauses and legislation that reflect or include components of housing rights as embodied in international human rights law. Recognising the broad aspects of housing rights, the Chapter

1. Until 1997 known as the United Nations Centre for Human Rights.

2. Until 2002 known as the United Nations Centre for Human Settlements (Habitat).

includes, in addition to more general constitutional clauses, relevant excerpts of national legislation addressing:

- security of tenure in informal settlements;
- protection from forced eviction by State and non-State actors;
- non-discrimination, including gender-based discrimination in customary law;
- provision of affordable housing for the poor;
- accessibility to persons with disabilities;
- housing restitution;
- habitability;
- homelessness; and
- land rights.

To date, no one piece of national legislation provides comprehensive protection of housing rights as enshrined in international law. Yet, these examples do provide examples of how States protect and guarantee certain aspects and components of internationally recognised housing rights.

6. Chapter V provides a discussion of the enforceability of housing rights. This discussion takes place within the context of an internationally recognised framework for economic, social and cultural rights as well as within the context of regional and national legal regimes. It also discusses various judicial and quasi-judicial remedies for housing rights violations. Importantly, the Chapter also offers lessons for civil society, non-governmental organisations (NGOs), community-based organisations (CBOs), housing rights advocates and others on how to craft litigation or other advocacy strategies for the promotion and enforcement of housing rights. These lessons are expected to provide interested entities and individuals with additional tools for the promotion and protection of housing rights in international, regional and national judicial and quasi-judicial fora.

7. Chapter VI offers recommendation for legislative reforms to more effectively address housing rights issues. These recommendations, informed by and based on international human rights standards, principles and norms, are aimed at legal reform at the appropriate level, be it international, national or local. The Chapter also examines how various levels of law – be they international, regional, national and local – should be informed by the others to create the strongest protections within all legal regimes. Moreover, it discusses the roles civil society and other advocates can play with respect to creating a more comprehensive and uniform legal regime to secure respect, promotion, protection and fulfilment of housing rights around the world.

8. Finally, the Bibliography provides details of all references used in the text of the report. It also includes additional references to published works dealing with housing, land and property rights set within national legislative frameworks. It thus serves as supportive reading in the development of model housing rights legislation. The bibliography is split into four main sections to facilitate reading:

- a selected bibliography of (mostly) published books, reports and articles (referenced as: ‘author, publishing year’);
- international legal instruments (and related interpretations) and declarations/programmes of actions of major United Nations conferences (referenced as: ‘name of instrument’);
- other United Nations documents (referenced by ‘UN Doc. symbol’); and
- relevant court decisions (referenced (mostly) as: ‘*plaintiff v. defendant*’).

9. As accompanying references to this report, UN-HABITAT has prepared three supportive compilations of international and national housing rights legislation. These are available in electronic format only, from the UN-HABITAT website³ and will be updated periodically:

- *International Instruments on Housing Rights*:⁴ This compilation contains excerpts of relevant international instruments on housing rights. It includes ratification information and interpretative documents by the United Nations Committee on Economic, Social and Cultural Rights (such as the full text of relevant General Comments to the ICESCR), and other entities. The latter includes the full texts of two of the most important interpretative texts relating to economic, social and cultural rights: the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (Limburg Principles) and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht Guidelines).
- *National Housing Rights Legislation*:⁵ This compilation contains an exhaustive compilation of constitutional clauses with respect to housing rights. Several States have expressed general housing policies within their national constitutions regarding the promotion and protection of housing rights. These statements are enforceable legal standards in their own right. Moreover, they can also be used to determine the context in which national housing policy should be read. They can therefore be used to interpret the legislative intent of more specific housing rights legislation. This compilation also contains the full texts or excerpts of

3. See <<http://www.unhabitat.org/unhrp>>.

4. UN-HABITAT, 2002b.

5. UN-HABITAT, 2002c.

selected housing legislation from several States – representing a variety of legal, political, economic and cultural systems and traditions. This compilation is not comprehensive, yet, it is representative of the various means by which States have chosen to include housing rights, including their international legal obligations, within their domestic legal systems.

- *Compilation of Selected Adjudication on Housing Rights*:⁶ This compilation contains a more in-depth compilation of selected housing rights court cases. It also contains relevant excerpts of national legislation critically reviewed by the United Nations Committee on Economic, Social and Cultural Rights.

6. UN-HABITAT, 2002a.

I. Introduction: From the promotion to the protection of housing rights

“We reaffirm our commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments. ... We commit ourselves to the goal of improving living and working conditions on an equitable and sustainable basis, so that everyone will have adequate shelter that is healthy, safe, secure, accessible and affordable and that includes basic services, facilities and amenities, and will enjoy freedom from discrimination in housing and legal security of tenure. We shall implement and promote this objective in a manner fully consistent with human rights standards.”¹

To live in a place, and to have established one’s own personal habitat with peace, security and dignity, should be considered neither a luxury, a privilege nor purely the good fortune of those who can afford a decent home. Rather, the requisite imperative of housing for personal security, privacy, health, safety, protection from the elements and many other attributes of a shared humanity, has led the international community to recognize adequate housing as a basic and fundamental human right.

Since the adoption of the Universal Declaration of Human Rights in 1948, the right to adequate housing has been reaffirmed and explicitly recognised in a wide range of international human rights instruments as a component of the right to an adequate standard of living, and joined the body of universally accepted and applicable international human rights law.

The strongest references to housing rights in the international legal context is the right to adequate housing as enshrined in Article 25 of the Universal Declaration of Human Rights and Article 11(1) of the ICESCR. Housing rights, however, entail a bundle of specific rights that are not limited to those protected in the economic, social and cultural context. A number of other covenants and conventions guarantee more specific aspects of housing rights (see sub-chapter I.B below).

I.A. The Universal Declaration of Human Rights

The recognition and promotion of housing rights by the United Nations began soon after the creation of the organisation itself, during the drafting of the

1. Habitat Agenda, paragraph 39.

Universal Declaration of Human Rights which clearly provides in Article 25(1) that:

“Everyone has the right to a standard of living adequate for health and well being of himself [or herself] and his [or her] family, including food, clothing, housing and medical care and necessary social services . . .”

Since the adoption of the Universal Declaration in 1948, housing rights have been reaffirmed and reinforced, with the United Nations paying considerable attention to various measures designed to promote and protect these critical and fundamental rights. In recognition of the indispensable importance of housing for individuals to live a full life and to enjoy and benefit from all human rights, housing rights find legal substance within many international human rights texts and have been reaffirmed in numerous international declaratory and policy-oriented instruments.

The protection of the right to adequate housing enshrined in the Universal Declaration applies to every Member State of the United Nations, as it defines the human rights that all members, as parties to the United Nations Charter, are bound to respect, protect and fulfil. Furthermore, it is now argued that the Universal Declaration itself has ripened into customary international law and thus applicable to all States.

I.B. International Covenants and Conventions

In addition to the Universal Declaration, several international covenants and conventions contain housing rights provisions. These international instruments – also known as treaties – are legally binding upon those States that have become parties to these instruments through the ratification or accession process.² With respect to housing rights, perhaps the most important such instrument is the ICESCR. The 145 States parties (as of February 2002) to the Covenant are thus bound to Article 11(1), which reads:

“The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself [or herself] and his [or her] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

2. For current ratification status of United Nations covenants and conventions, see <<http://www.unhchr.ch/pdf/report.pdf>> or <<http://www.unhchr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet>>.

In addition to the ICESCR, housing rights are found – although using slightly different terminology in a number of other international instruments, including, *inter alia*:³

- the International Covenant on Civil and Political Rights (ICCPR), which protects persons from arbitrary or unlawful interference with their home (Article 17);⁴
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), in Article 5(e)(iii), prohibits discrimination on account of race, colour, or national or ethnic origin with respect to the right to housing;⁵
- Likewise, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) proscribes, in Article 14(2)(h), obliges States Parties to eliminate discrimination against women in rural areas in order to ensure that such women enjoy adequate living conditions, particularly in relation to housing;⁶
- The Convention on the Rights of the Child (CRC) obliges States Parties to provide, in cases of need, material assistance and support programmes to families and children, particularly with regard to housing (Article 27(3));⁷

3. For a more comprehensive compilation of relevant excerpts from these and other international instruments relevant to housing rights refer to UN-HABITAT, 2002b.

4. Article 17(1) of the International Covenant on Civil and Political Rights, states that “*No one shall be subjected to arbitrary or unlawful interference with his [or her] . . . home.*” Article 17(2) states: “*Everyone has the right to the protection of the law against such interference.*”

5. Article 5(e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination states: “*In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:...(e) in particular...(iii) the right to **housing**.*”

6. Article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination Against Women 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.*”

7. Article 27(3) of the Convention on the Rights of the Child states: “*States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and **housing**.*”

- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) provides in Article 43(1)(d) that migrant workers shall not be discriminated against in terms of access to housing;⁸
- the International Convention Relating to the Status of Refugees provides in Article 21 similar protection against discrimination for refugees;⁹ and
- ILO Recommendation No. 115 on Workers' Housing.

In addition, the following two instruments guarantee certain land and property rights, respectively –

- ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries; and
- Universal Declaration of Human Rights, Article 17.

I.C. General Comments and Recommendations adopted by United Nations Treaty-Monitoring Bodies

The United Nations Committee on Economic, Social and Cultural Rights is the treaty body mandated to monitor States Parties' compliance with the ICESCR. It is comprised of 18 independent experts, and has played a particularly prominent and leading role in the promotion and implementation of housing rights. As mentioned above, Article 11(1) of the Covenant guarantees for everyone the right to adequate housing. The standards contained therein constitute the most significant international legal source of the human right to adequate housing under international human rights law. Consequently, this provision has provided the basis for much of the jurisprudential developments of this right, and has been given a very prominent stature by the Committee on Economic, Social and Cultural Rights during the past decade.

In 1991, the Committee adopted General Comment No. 4 on the right to adequate housing, which provides the most authoritative legal interpretation of

8. Article 43(1)(d) of the International Convention on the Protection of the Rights of All Migrant Workers and Member of the Their Families states: "*Migrant workers shall enjoy equality of treatment with national of the State of employment in relation to...(d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents.*"

9. Article 21 of the Convention relating to the Status of Refugees states: "*As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.*"

the right to adequate housing under international law to date.¹⁰ General Comment No. 4 brings legal clarity to the content of the right and identifies some of the principal issues of importance in relation to this right.

In this General Comment, the Committee views that the right to housing should not be interpreted in a narrow or restrictive sense which equates 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.

Significantly, General Comment No. 4 points out to the importance of the concept of adequacy 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, General Comment identifies seven aspects that form integral components of the right:

- legal security of tenure;
- availability of services, materials, facilities and infrastructure;
- affordability;
- habitability;
- accessibility;
- location; and
- cultural adequacy.¹¹

General Comment No. 4 is also instrumental in outlining the precise legal steps that Governments must take to comply with their housing rights obligations as stipulated under international law (see section II.C).

International human rights bodies have increasingly addressed the issue of liability for forced evictions. In 1991, the Sub-Commission on Prevention of Discrimination and Protection of Minorities¹² under the United Nations Commission on Human Rights, adopted resolution 1991/12 which provides guidance in determining the legal responsibilities of those who evict. It stated that –

“forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a number of actors, including,

10. UN Doc. E/1992/23-E/C.12/1991/4, annex III. All General Comments and Recommendations are available in UN Doc. HRI/GEN/1 and under OHCHR website.

11. *Ibid.*, paragraph 8.

12. Since 1999 known as the United Nations Sub-Commission on the Promotion and Protection of Human Rights.

but not limited to, occupation authorities, national governments, local governments, developers, planners, landlords, property speculators and bilateral and international financial institutions and aid agencies”.

The resolution also emphasized that the ultimate responsibility for preventing evictions rests with Governments.

In 1997, the Committee on Economic, Social and Cultural Rights adopted the General Comment No. 7 on the right to adequate housing (forced evictions). In this General Comment, the Committee defined the term ‘forced eviction’ and reaffirms that forced evictions are *prima facie* violations of the right to adequate housing. The Committee also viewed that any States should be strictly prohibited – in all cases – from intentionally making a person, family or community homeless following an eviction, whether forced or lawful. This General Comment also outlined a series of procedural steps that must be taken in any instance where eviction cannot be avoided.

In parallel to these developments, the Commission on Human Settlements in 1993 urged States to establish appropriate monitoring mechanisms to provide indicators on the extent of homelessness, inadequate housing conditions, persons without security of tenure and other issues arising from the right to adequate housing.¹³ Furthermore, the Agenda 21 explicitly recognized the importance of security of tenure. The Commission on Human Settlements also urged all States to cease practices, which resulted or could result in infringements of the human rights to adequate housing.¹⁴ This referred in particular to the practice of forced mass evictions and any form of racial or other discrimination in the housing sphere.

In examining State party reports for monitoring compliance with the Covenant, the Committee has concluded that several States parties have failed to meet their respective housing rights obligations under the Covenant. This has often been due to State support or tolerance of the practice of forced evictions.¹⁵ In such cases, the Committee issues specific recommendations to the States parties on legislative and other measures that are necessary to ensure full compliance with the housing rights norms embodied in the Covenant, and to ensure the realisation of these rights for its citizens to whom the state has a duty to respect, protect and fulfil (see Chapter V below).

13. Commission on Human Settlements resolution 14/6: “The human right to adequate housing”, adopted 5 May 1993 (paragraph 6). See UN Doc. A/48/8.

14. *Ibid.*, paragraph 3.

15. For a comprehensive overview of legal activity addressing the practice of forced evictions under international law, see OHCHR, 1996; and COHRE, 1999.

Other human rights treaty-monitoring bodies have also attached increasing importance to the housing rights norms they are obliged to monitor. Notable efforts have emerged from the United Nations Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Committee on the Elimination of All Forms of Discrimination Against Women. All of these are geared toward promoting global compliance with the specific housing rights standards found in the respective treaties that these bodies monitor. For instance, the Committee on the Elimination of Racial Discrimination has examined racially based housing segregation, adopting in 1995 General Recommendation XIX on the subject. Similarly, the Committee on the Elimination of All Forms of Discrimination against Women has focussed on discriminatory home ownership and inheritance laws. The Committee on the Rights of the Child has paid particular attention to homeless children and the vulnerable position in which children without housing live.

I.D. United Nations resolutions

Resolutions adopted by the United Nations bodies also provide important guidance for the elaboration of international law. With the exception of those adopted by the Security Council, such resolutions are not legally binding *per se*. They do, however, indicate at the very least the international community's understanding of international law, as well as a political willingness to work towards the achievement of the respective resolution's contents. Furthermore, since most United Nations resolutions are adopted by consensus, they tend to indicate universally accepted views of international standards, principles and norms. Such resolutions also constitute a significant political commitment of the international community towards a particular aim.

Throughout the past two decades, resolutions recognizing and reaffirming housing rights have been adopted by the General Assembly (1986, 1987);¹⁶ the Economic and Social Council (1987);¹⁷ the Commission on Human Rights (1986-1988, 1993, 1995, 2000-2002);¹⁸ the United Nations Commission on Human Settlements (1993, 1995, 1997)¹⁹ and the Sub-Commission on the

16. UN Docs. A/RES/1986/146 and A/RES/1987/146.

17. UN Docs. E/RES/1987/37 and E/RES/1987/62.

18. UN Docs. E/CN.4/RES/1986/36, E/CN.4/RES/1987/22, E/CN.4/RES/1988/24, E/CN.4/RES/1993/77, E/CN.4/1995/RES/19, E/CN.4/RES/2000/9, E/CN.4/RES/2000/13, E/CN.4/RES/2001/28, E/CN.4/RES/2001/34, E/CN.4/RES/2002/28 and E/CN.4/RES/2002/49.

19. See Commission on Human Settlements resolution 14/6: "The human right to adequate housing", *adopted* 5 May 1993 (UN-DOC A/48/8); Commission on Human Settlements resolution 16/7, The realization of the human right to adequate housing, *adopted* 7 May 1997 (UN-DOC A/52/8).

Promotion and Protection of Human Rights²⁰ (1991-1998)²¹ Each of these resolutions has given added weight to the primacy of housing rights.

I.E. Other international declarations on housing rights

Housing rights have also been extensively recognised in the framework of a wide range of international declarations on related fields, as distinct from human rights law and mechanisms. References to housing rights have been included within the Habitat Agenda, Agenda 21, the Vancouver Declaration on Human Settlements and other texts. The unanimously accepted Global Strategy for Shelter to the Year 2000 asserts that –

“the right to adequate housing is universally recognized by the community of nations... All nations without exception, have some form of obligation in the shelter sector, as exemplified by their creation of ministries or housing agencies, by their allocation of funds to the housing sector, and by their policies, programmes and projects... All citizens of all States, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them.”²²

The Habitat Agenda provides a strong statement of global support for the implementation of housing rights, with governments recognising that they all have a “*responsibility in the shelter sector*” and that they “*should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing.*”²³ With respect to specifics, the Habitat Agenda articulates an inexhaustive list of actions including, *inter alia* –

- adopting legislation prohibiting and guaranteeing protection from discrimination in the housing sector;
- “*providing legal security of tenure and equal access to land by all, including women and those living in poverty;*”
- creating effective protection from forced eviction;

20. Until 1999 known as the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

21. See UN Docs. E/CN.4/Sub.2/RES/1991/26; E/CN.4/Sub.2/1992/26; E/CN.4/Sub.2/1993/36; E/CN.4/Sub.2/RES/1994/8; E/CN.4/Sub.2/RES/1995/27; E/CN.4/Sub.2/RES/1997/6; E/CN.4/Sub.2/RES/1997/19; E/CN.4/Sub.2/RES/1998/9; E/CN.4/Sub.2/RES/1998/15; E/CN.4/Sub.2/RES/1998/26.

22. Global Strategy for Shelter to the Year 2000, point 13.

23. Habitat Agenda, paragraph 61.

- adopting “*policies aimed at making housing habitable, affordable and accessible;*”
- using regulations and market incentives to expand the supply of affordable housing, promoting support services for the homeless and other vulnerable groups;
- mobilizing resources for housing and community development;
- encouraging the private sector to provide affordable rental and owner-occupied housing; and
- monitoring and evaluating “*housing conditions, including the extent of homelessness and inadequate housing, and, in consultation with the affected population, formulating and adopting appropriate housing policies and implementing effective strategies and plans to address those problems.*”²⁴

I.F. OHCHR and UN-HABITAT

Attention to housing rights has increased during recent years within the United Nations system, led by the efforts of both UN-HABITAT and OHCHR. The long-established normative framework of housing rights as human rights under international law has led to crucial initiatives aimed at promoting these rights. These initiatives have established much of the groundwork required for developing active measures towards the protection of housing rights.

The OHCHR has given increased attention to the promotion of housing rights, as the co-ordinator of the human rights programme within the United Nations system. It has published fact sheets on ‘the human right to adequate housing’ and ‘forced evictions and human rights’,²⁵ – and more recently launched a dedicated website (<http://www.unhchr.ch/housing>) to provide the broader public, as well as governments, with basic information on this still often overlooked basic human right.

Furthermore, in 1996 and 1999, the OHCHR and UN-HABITAT convened expert group meetings on the human right to adequate housing, to strengthen efforts supporting these rights. UN-HABITAT has continued to approach housing with a human rights perspective, and has developed a United Nations housing rights strategy, which has yielded substantially enhanced international action on this right.²⁶ The collaboration between the OHCHR and UN-HABITAT led to the formation of the UNHRP in 2002. The establishment of this joint programme has been mandated by the legislative bodies of the two

24. Habitat Agenda, paragraph 61.d.

25. United Nations Centre for Human Rights, 1993; and OHCHR, 1996.

26. See for instance UN Doc. HS/C/17/INF.6.

organizations,²⁷ and it is the main vehicle for advancing housing rights within the United Nations system. Additionally, the Global Campaign for Secure Tenure (see Chapter III) is designed to further protect housing rights by advocating for security of tenure for all dwellers.

I.G. Other United Nations mechanisms

In 1993, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities under the Commission on Human Rights,²⁸ appointed a Special Rapporteur on promoting the realization of the right to adequate housing, Mr. Rajindar Sachar, entrusting him with the task of developing practical measures toward the realization of this human right.²⁹ In pursuit of his mandate, Mr. Sachar prepared four detailed reports and concluded his work in August 1995.³⁰

In 2000, the Commission on Human Rights appointed Mr. Miloon Kothari of India as Special Rapporteur of the Commission whose mandate will focus on adequate housing as a component of the right to an adequate standard of living. He was requested by the Commission to, *inter alia* –

- carry out a three-year study on housing rights; develop a regular dialogue and discuss possible areas of collaboration with Governments, relevant United Nations bodies, specialized agencies, international organisations in the field of housing rights, NGOs and international financial institutions; and
- promote co-operation among and assistance to Governments in their efforts to secure housing rights.³¹

In his first report to the Commission,³² he called for a broad interpretation of the right to adequate housing as contained in international legal instruments, keeping in view the indivisibility and interrelatedness of all human rights. The report included a review of international legal instruments on the right to

27. Commission on Human Settlements resolution 16/7: “The realisation of the human right to adequate housing”, *adopted* 7 May 1997 (see UN Doc. A/52/8) and Commission on Human Rights resolution 2001/28 (UN Doc. E/CN.4/RES/2001/28).

28. The Sub-Commission on the Prevention of Discrimination and Protection of Minorities is a subsidiary body of the Commission on Human Rights. It is comprised of member-experts acting in an independent capacity. In 1999, it was renamed the United Nations Sub-Commission on the Promotion and Protection of Human Rights.

29. See UN Doc. E/CN.4/Sub.2/1992/RES/26.

30. UN Docs. E/CN.4/Sub.2/1992/15; E/CN.4/Sub.2/1993/15; E/CN.4/Sub.2/1994/20; and E/CN.4/Sub.2/1995/12.

31. See UN Doc. E/CN.4/RES/2000/9.

32. UN Doc. E/CN.4/2001/51.

adequate housing, and highlighted a decade of standard-setting work by the United Nations human rights mechanisms. In setting out the framework for his work, the Special Rapporteur called for the examination of a range of issues related to adequate housing, including gender discrimination, land, access to potable water, issues of economic globalization and its compatibility with human rights and particularly its impact on housing, the international cooperation dimension; forced evictions and poverty, and global social policies and their interface with human rights.

His second report to the Commission³³ had two thematic focuses: one is discrimination and segregation in the context of follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the other is the impact of globalization on the realization of housing rights. The realization of housing rights in an environment free from racial discrimination will have a direct bearing on other congruent human rights. In today's context of globalization and the free market economy, there is a trend towards greater competition and market efficiency, which often results in increased marginalization of the poor. The report examines in particular the effects of privatization of water services in cases where it has negatively affected the poor. The report concludes that unfettered globalization cannot bring about the fulfilment of economic, social and cultural rights, including the right to adequate housing. Governments have an important role to play in reconciling macroeconomic policies with social objectives and meeting the needs of the most vulnerable first, keeping in mind the primacy of human rights obligations.

I.H. Conclusion

Housing rights rest upon the firm foundations of international human rights law, as well as the subsequent interpretative development of the standards, principles and norms embodied in that law. Indeed, the concept of housing rights has expanded beyond traditional, and often rudimentary, perceptions of those rights. The diversity in texts regarding housing rights may pose numerous ramifications for the international and national legal regimes. Yet, one clear priority remains: the imperative of consolidating promotional activities through an expanded focus on the global protection of housing rights.

33. UN Doc. E/CN.4/2002/59.

II. Housing rights as progressive legal obligations

Given the nature of housing, it is unlikely that a Government will be able to immediately fulfil housing rights upon accepting the legal obligation to do so. This is, in fact, true for virtually all human rights – no right can be transformed from principle to reality overnight. It is for these and other important reasons that the ICESCR uses a very careful combination of terms to describe the nature and scope of legal obligations possessed by each of the 145 States that have ratified the Covenant. Similar to the way the Habitat Agenda uses the term ‘progressive,’ so too does Article 2 (1) of the Covenant. It asserts:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”

In many respects, Article 2(1) is seen as the cornerstone of the entire Covenant, and a proper understanding of the idea of the progressive realisation of rights is fundamental to understanding housing rights. One United Nations publication describes progressive realisation in the following terms:

“The ‘progressive obligation’ component of the Covenant is often mistakenly taken to imply that only once a State reaches a certain level of economic development must the rights established under the Covenant be realized. This is not the intent of this clause. Rather, the duty in question obliges all States parties, notwithstanding their level of national wealth, to move immediately and as quickly as possible towards the realization of economic, social and cultural rights. This clause should never be interpreted as allowing States to defer indefinitely efforts to ensure the enjoyment of the rights laid down in the Covenant.

Whereas certain rights, by their nature, may be more apt to be implemented in terms of the ‘progressive obligation’ rule, many obligations under the Covenant are clearly required to be implemented immediately. This would apply especially to non-discrimination provisions and to the obligation of States parties to refrain from actively violating economic, social and cultural rights or withdrawing legal and other protection relating to those rights. The Committee on Economic, Social and Cultural Rights has asserted that this duty exists independently of an increase in available resources and thus recognizes that all existing

resources must be devoted in the most effective way possible to the realization of the rights enshrined in the Covenant.”¹

These points are based largely on the General Comment No. 3 on the nature of States parties obligations² and the Limburg Principles. Ultimately, the ‘progressive realization’ means that States are obliged to continuously strive to strengthen economic, social and cultural rights, including the right to adequate housing. The ‘progressive realization’ clause imposes an obligation on States to move as expeditiously and effectively as possible towards realising fully the right to housing. It is important to note that this obligation exists independently of any increase in available resources. As Article 2 (1) clearly indicates, one method by which to do so is through the adoption of legislative measures

II.A. Terminology

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.²

As a reflection of the diverse manner by which the right to housing has been characterised under international legal norms, a range of distinct terms are often used interchangeably to invoke the position of housing as a core issue of human rights law. The terminology most frequently associated with these assertions include, *inter alia*:

- the human right to adequate housing;
- the right to housing;
- the right to adequate housing;
- housing rights;
- the right to one’s home;
- the right to shelter;
- land rights;
- livelihood rights; and
- the right to the city.

Occasionally, the right to property or property rights are mistakenly confounded with the right to housing or housing rights. Although there are certain areas of overlap between these two areas, this relationship is a complex one comprised of both distinctions and similarities. Indicative of the specific

1. United Nations Centre for Human Rights, 1996.

2. General Comment No. 4, paragraph 7.

dimensions held by each of these two rights, an independent United Nations expert has explicitly declared with respect to housing rights that –

*“it may be noted that special attention by Governments should be paid to the adoption and strengthening of national legislation on the implementation of adequate housing.”*³

The different linguistic formulations used in elaborating human rights provisions relating to housing have led to some perplexity (and even controversy) as to what human rights related to housing actually imply in terms of law, State obligations and individual rights. These distinctions, however, have often been overstated, for although the terms may differ, international agreement does exist as to the intent, meaning and actions required with a recognition of such rights as established under international human rights law.

For the purposes of this report, and as a means of precluding misinterpretations of human rights relating to housing, the term ‘housing rights’ is perhaps most appropriate. First, as discussed in the previous chapter, various elements of housing rights are found in a number of international covenants and conventions. Second, the term ‘housing rights’ allows a broad and encompassing analysis to emerge, whereby all legislation with any bearing in any way on the enjoyment of the housing rights can be addressed. The fact that not all States have codified laws utilising the term ‘human right to adequate housing’ – but may have legislated in a manner directly linked to improving the more broadly-defined ‘housing rights’ of their citizenry – provides an additional normative basis for the choice of this term throughout this document. The term ‘**housing rights**’ should, therefore, be seen as a general expression, articulating the full range of concerns relating, even marginally, to the housing process, as set within the human rights domain. The terms ‘**right to adequate housing**’ or ‘adequate housing,’ which are legally-defined terms used in the ICESCR, however, are used when appropriate, for instance when referring to housing rights in the context of that Covenant.

It should be noted that housing rights, as explained above, embody a number of components, ranging from ownership rights through security of tenure to the components defining adequacy. Additionally, however, this report refers at times to rights with respect to both land and property. Though not established to the same extent as housing rights within international human rights law, land and property rights are embodied in certain international instruments. The **rights to land** for the most part revolve around the rights to possession and to use of resources. **Property rights**, with the exception of housing as property, are usually limited to equality rights, the right to non-interference and the prohibition against arbitrary expropriation.

3. UN Doc. E/CN.4/1994/19, paragraph 326.

For the purposes of this report, land rights and property rights are defined within the context of the few international instruments addressing those rights. For example, governments have recognized the land rights of indigenous peoples through the auspices of the International Labour Organization (ILO). Article 7(1) of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), states that indigenous peoples –

“shall have the right to decide their own priorities for the process of development as it affects ... the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.”

Furthermore, Article 14(1) of this Convention recognises *“the rights of ownership and possession of [indigenous peoples] over the lands which they traditionally occupy”* while Article 14(2) pledges governments to guarantee effective protection of those ownership and possession rights over land. Additionally, Article 16(1) states that indigenous peoples *“shall not be removed from the lands which they occupy.”*

With respect to general property rights, Article 17 of the Universal Declaration of Human Rights guarantees the right of everyone to own property alone or in association with others. Furthermore, it states that no one should be arbitrarily deprived of property. When the ICCPR and the ICESCR were being drafted, however, governments could not agree on property rights and thus the rights contained in Article 17 of the Universal Declaration were not included in either Covenant.

At the regional level, the Organization of American States (OAS) has recognized some land and property rights within their key human rights texts. This is outlined in sub-chapter V.D below.

One final note, housing rights have also at times come into conflict with property rights, for example the right of a landlord over her or his property and the right of a tenant to security of tenure. In such cases, the overwhelming view is that the public interest of securing housing rights trumps private property rights. Indeed, in the words of the Special Rapporteur of the Sub-Commission on promoting the realization of the right to adequate housing:

“Under international treaties where the right to property is protected, and in countries in which it is a fundamental right, it has never been doubted that the right to property must yield to the greater social good of the community.”⁴

4. UN Doc. E/CN.4/Sub.2/1994/20, paragraph 67. For an in-depth examination of the jurisprudence regarding housing rights vs. property rights, see also paragraphs 67–76 of the same document.

II.B. Are states obliged to build homes for everyone?

The complex nature of housing and the growing prominence of human rights within international relations and law, has led certain commentators to equate a recognition of housing rights with the immediate duty of governments to substantively provide a house to anyone who requests it to do so. This inaccurate understanding of the meaning of housing rights, however, reflects neither general State practice nor the definitive interpretations given this right. For instance, the final report of the Special Rapporteur of the Sub-Commission in 1995 provides guidance into how the right to adequate housing should be approached by firmly stating that **this right should not be taken to imply:**

- (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.⁵*

Conversely, in determining the legal implications these rights, the Rapporteur notes that recognition of housing rights must be seen and interpreted, in the most general sense, to imply:

- (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 aspects of the right in question.⁶*

5. UN Doc. E/CN.4/Sub.2/1995/12, paragraphs 4-5.

6. UN Doc. E/CN.4/Sub.2/1995/12, paragraph 12.

The State is generally not obliged to construct housing for everyone who requests. Laws and jurisprudence in a significant number of States as provided under section V.F, however, indicates that under certain circumstances, the State is legally required to provide particular persons or groups of persons with housing in an expedient manner. To argue, therefore, that housing rights obligations never signify the substantive provision of a home by the State to those in particular need does not completely correspond to practical and legal realities. The Republic of South Africa, for instance, has enshrined the right to adequate housing in its Constitution (1996). With respect to national legislation, Finland makes it mandatory for local government authorities to provide housing resources for the severely handicapped under certain circumstances (Art. 8(2), Act No. 380/1987). Further laws in Finland, including an amendment to the Child Welfare Act (No. 683/1983), require that local government must rectify inadequate housing conditions or, as the case may be, provide for housing when inadequate or non-existent housing causes the need for special child welfare or constitutes a substantial hindrance to the rehabilitation of the child or the family.⁷ In the Republic of Korea, the Housing Construction Promotion Act (1972) calls for provision of the construction and the supply of dwelling units for persons who lack housing. Likewise, in the United Kingdom, the Homeless Persons Act (1977) requires local councils to provide accommodation to homeless families and homeless persons in priority need. Act No. 1493 (1993) in Bolivia mandates the Ministry of Human Development to promote the construction of subsidized housing. The Government of Germany has stated that in the case of homelessness, Article 1(1), in association with Articles 20(1) and 28(1) of the Basic Law on the principle of a social state based on the rule of law, gives rise to the homeless person's subjective right to be allocated accommodation enabling her/him to lead a dignified existence. Furthermore, this 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.⁸ It has also been asserted that jurisprudential considerations can be construed to reveal a right to housing, although an independent right to housing is not established in the German Basic Law.⁹

In January 1996, UN-HABITAT and OHCHR jointly convened an expert group meeting on the human right to adequate housing. The experts recognised that under certain defined circumstances it may be incumbent on the State to provide housing:

7. Karapu and Rosas, 1990.

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

9. Ruthers, 1993. For relevant excerpts, see UN-HABITAT, 2002c.

*“[a]mong the core areas of the State role in realizing the human right to adequate housing are provision of security of tenure, prevention (reduction) of discrimination in the housing sphere, prevention of illegal and mass evictions, elimination of homelessness and promotion of participatory processes for individuals and families in need of housing. In specific cases, the State may have to provide direct assistance, including provision of housing units, to people affected by disasters (natural and man-made) and to the most vulnerable groups in society.”*¹⁰

Other examples could be given. The important point, however, is that the primary duty of the States bound by similar legal obligations is to create conditions¹¹ so that all residents may benefit from and enjoy in full the entitlements implied in the right to housing, within the shortest possible time-frame. General Comment No. 4 reiterates this perspective, attesting that:

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

*“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 publicly built housing.”*¹³

It is, in the light of above explanations, clear that States are not necessarily required to build housing for the entire population. They must, however, provide access to adequate housing under particular circumstances, in line with general State obligations and personal entitlements associated with the human right to adequate housing.

10. United Nations Centre for Human Rights and UNCHS (Habitat) 1996. See also UN Doc. HS/C/15/2/Add.2.

11. Legislative, administrative, regulatory, economic, social, policy and so forth.

12. General Comment No. 4, paragraph 12.

13. General Comment No. 4, paragraph 14.

II.C. Legal obligations of housing rights

Legal duties relating to housing rights are a fundamental component of State obligations arising from international law. The Habitat Agenda states that –

*“within the overall context of an enabling approach, Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing.”*¹⁴

Every State holds such legal duties through, *inter alia*, their freely accepted adherence to international covenants and conventions recognizing housing rights and the corresponding obligations.

The nature of the legal obligations of States is set out in article 2 of the ICESCR.¹⁵ This article states that a State party is required to take legislative and other steps to the ‘maximum of its available resources’, with a view to achieving ‘progressively’ the full realisation of the rights recognised in the Covenant, including the right to adequate housing. States are also required to ensure that no form of discrimination is tolerated vis-à-vis the protection of the rights embodied in the Covenant.¹⁶

In its General Comment No. 3 (1990), the Committee on Economic, Social and Cultural Rights clarified that the principal obligation of States is to take steps to achieve progressively the full realization of the rights contained in the Covenant, including the right to adequate housing. The Committee stated –

With respect to the progressive realisation of housing rights, General Comment No. 3 states –

“The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in Article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the

14. The Habitat Agenda, paragraph. 61.

15. See Alston and Quinn, 1987; and Leckie, 1989.

16. Article 5(e)(iii) of the Convention on the Elimination of All Forms of Racial Discrimination clearly prohibits any discrimination disparately affecting the enjoyment of the right to housing.

real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d'être, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources."¹⁷

Even when 'available resources' are verifiably inadequate, States must nonetheless strive to ensure the widest possible enjoyment of the relevant rights under prevailing circumstances. Moreover, States must 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.¹⁸ Any 'deliberately retrogressive measures' affecting housing or other rights could only be justified by reference to the totality of the rights provided for in the ICESCR and in the context of the full utilisation of a State's maximum available resources. Above all, this clause requires effective and equitable use of combined resources immediately.¹⁹

Interpretations of the Covenant stress that all States, notwithstanding their level of economic development, possess a **minimum core obligation** to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights found in the Covenant. According to the Committee on Economic, Social and Cultural Rights, a State in which any significant number of individuals is deprived of basic shelter and housing is *prima facie* failing to perform its obligations under the Covenant.²⁰

A minimum core requirement with respect to the right to adequate housing entails a State's duty to immediately address the housing needs of its respective population if any significant number of individuals are deprived of basic shelter and housing. To do otherwise is considered a *prima facie* violation of the Covenant. Furthermore, any deliberately retrogressive measures and the practice of forced evictions may be considered *prima facie* violation of the right

17. General Comment No. 3, paragraph 9.

18. General Comment No. 3.

19. *Ibid.*

20. General Comment No. 4, paragraph 10.

to adequate housing, once again regardless of level of development or availability of resources.

Beyond this core requirement, the right to adequate housing, like any other human rights, imposes three levels or types of obligations on States parties: the obligations to **respect**, to **protect** and to **fulfil**.

The obligation **to respect** requires the State, and therefore all public organs and agents, to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure either alone or in association with others, which violates the housing rights of the individual or group or erode the legal status of these rights. As such, States must not infringe upon an individual's freedom to use those materials or other resources available to her or him in a way they find most appropriate to satisfy individual, family, household or community housing needs. In this context, governments must desist from restricting the right to popular participation and must accept the corresponding commitment to facilitate and create economic, social and political conditions conducive to self-help initiatives. In particular, States must not restrict the rights to freely organise and assemble, which are essential for the assertion of demands by dwellers or tenants groups.

The legal responsibility to respect housing rights also obliges States to refrain from carrying out, advocating or condoning the practice of forced or arbitrary evictions of any persons or groups from their homes, or partaking in any other violations of these rights. States must further respect a person's right to build their own dwellings and organize their living environments in a manner which most effectively suits their culture, skills, needs and wishes – unless these activities impinge upon public health or safety. Implementation of this obligation will require honouring fully the right to equality of treatment, principles of non-discrimination, the right to privacy of the home and other relevant rights.

The obligation **to protect** housing rights commits the State and its agents to prevent the violation of any individual's rights to housing – by not only the State itself, but also by individuals, private entities and other non-State actors. Holders of housing rights 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 judicial redress including legal and equitable 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 similarly be established.

The obligation to **fulfil** incorporates both an obligation to *facilitate* and an obligation to *provide*. The obligation to **fulfil (facilitate)** compels governments to place sufficient legal and policy emphasis on the full and progressive realisation of housing rights, through a series of active measures, including *inter alia*–

- national and/or local legislative recognition of the right;
- the incorporation of housing rights norms into housing and related policies; and
- the identification of incremental goals, measured by discernible indicators, towards the full enjoyment of housing rights by all sectors of society.

It would also be useful to have **national housing strategies** that –

- define the objectives for the development of the housing sector;
- identify the resources available to meet these aspirations;
- specify the most cost-effective way of using them; and
- outline the responsibilities and time frame for the implementation of the necessary measures.

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.*”²¹ Such a housing strategy should, therefore, reflect extensive genuine consultation with, and participation by, all those affected, including the homeless, the inadequately housed and their representatives.

Additional steps must be taken by governments to ensure co-ordination between national ministries or departments, regional and local authorities in order to reconcile related policies with the obligations arising from the Covenant. States are obliged to accurately assess the degree to which the right to housing remains unsatisfied or denied. Targeted efforts must be made to identify where, for whom and to what extent the right is not satisfied, and to appropriately target housing policies and legal measures towards attaining the right for everyone in the shortest possible time.

In comparison with the duties to respect and protect, the obligation to fulfil is both positive and interventionary. Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate housing by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This duty of States takes on an obviously fundamental role, and signifies the most direct involvement of public agencies towards securing

21. General Comment No. 4, paragraph 11.

housing rights for the most vulnerable population in a number of issues, including –

- public expenditure and resource allocation;
- governmental regulation of the economy, including land and housing markets;
- housing subsidies;
- monitoring rent levels and other housing costs;
- the provision of public housing, basic services and related infrastructure; and
- taxation and subsequent redistributive measures.

II.D. Conclusion

The adoption of national laws of one distinction or another – that have a bearing upon the satisfaction of the core elements of housing rights – are treated under international law as a key element of the progressive realisation dimensions of the housing rights. Without exception, every government has explicitly recognised to one degree or another the human rights dimensions of adequate housing. Therefore, many countries have responded positively to these international legal imperatives, adopting legislation designed to ensure at least partial compliance with their respective obligations under international law. This indicates a degree of global convergence of views on this activity.

Despite these steps, however, few governments could realistically claim to have removed all legal, customary or other obstacles preventing the fulfilment of housing rights. A State which has enshrined housing rights provisions within national laws may show great reluctance in pursuing or even allowing the implementation of such norms. It may even maintain additional legislation that has the effect of nullifying any legal recognition of housing rights.

Similarly, perhaps even fewer States could honestly claim to have devoted the “*maximum of its available resources*” (Article 2(1) of the Covenant) to the attainment for everyone, within the shortest possible time frame, of the right to adequate housing. Moreover, no government could proclaim that housing rights exist as much in fact within their jurisdictions as they do in international (or national) law. Thus, renewed commitments on housing rights and more refined legislative activities at the national level on housing rights appear necessary. Such initiatives should lead to action on –

- amending national legislation when existing laws are inconsistent with international human rights law;
- enforcing and implementing existing housing rights provisions with more vigour; and

- ultimately adopting new national and international legislation addressing the under-emphasized human right to adequate housing.

The next Chapter of this report illustrates that effective constitutional and legislative guarantees of the right to adequate housing are not only realistic but have already been adopted and enforced successfully in a number of countries.

III. Implementing housing rights through national law: a key focus of the Global Campaign for Secure Tenure

"We have considered, with a sense of urgency, the continuing deterioration of conditions of shelter and human settlements."¹

The right to adequate housing is widely recognised as a human right in international law, and a number of resolutions on the issue have been adopted by United Nations bodies. Arguing for an enabling strategy, the Habitat Agenda states clearly that *"the right to adequate housing has been recognized as an important component of the right to an adequate standard of living"*.²

The Commission on Human Rights has repeatedly called upon States to give due regard to security of tenure. In its resolution 2001/28 adopted in April 2001, the Commission called upon States to give –

*"particular attention to the individuals, most often women and children, and communities living in extreme poverty, and to security of tenure."*³

The Habitat Agenda reaffirmed the role of national governments in promoting and protecting secure tenure, stating in paragraph 40 (b) that governments should commit themselves to:

"Providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including ... ownership of land and other property, credit, natural resources and appropriate technologies."

As part of its mandate as the lead agency within the United Nations system for co-ordinating activities in the field of human settlements and as a focal point for the implementation of the Habitat Agenda, UN-HABITAT launched the Global Campaign for Secure Tenure in 2000. The Campaign is designed to take forward the commitment of Governments to provide Adequate Shelter for All, one of the two main themes of the Habitat Agenda.

The primary purpose of the Campaign is to give a voice to the hundreds of millions of people living without adequate housing, including those living in slums and in shacks, the homeless, and those living in temporary shelter. UN-

1. Istanbul Declaration, paragraph 2.

2. Habitat Agenda, paragraph 61.

3. UN Doc. E/CN.4/RES/2001/28.

HABITAT has recognised that the provision of enabling legislation providing for a range of tenure options will greatly enhance shelter delivery. Furthermore, constitutional clauses and legislation implementing the right to adequate housing generally will provide not only security of tenure. It will also ensure that the housing meets the minimum standards that are considered adequate for the shelter, safety and health of its inhabitants.

This Chapter thus provides arguments for the implementation of housing rights, including the right to secure tenure, through national law. The following sub-chapters contain an examination of –

- housing rights, as constitutionally recognised;
- arguments for improving constitutionally recognised housing rights; and
- reasons why States may be obligated to, or at least should, implement housing rights – including the right to adequate housing as recognised under international law – within their respective national legislation.

III.A. Constitutional recognition

Constitutions from all regions of the world, 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 national Constitutions refer to general obligations within the housing sphere or specifically to the right to adequate housing. If human rights closely linked to and indispensable for the enjoyment of housing rights are included in such an analysis,⁴ the overwhelming majority of constitutions make effective reference to housing rights.

Many constitutions contain explicit references to the individual or family right to adequate housing.⁵ 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.⁶ Not all States, however, have recognised

4. Including, *inter alia*, 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 dignity, the right to security of the person, certain formulations of the right to property or the peaceful enjoyment of possessions.

5. See, e.g., the Constitutions of Belgium, Ecuador, Guyana, Haiti, Honduras, Iran, Mali, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, the Russian Federation, Sao Tome and Principe, Seychelles, South Africa, Spain and Uruguay. See UN-HABITAT (2002c) for relevant excerpts.

6. See, e.g., the Constitutions of Bangladesh, Bolivia, Brazil, Burkina Faso, Colombia, Costa Rica, Dominican Republic, El Salvador, Finland, Guatemala, Nepal, Netherlands, Nigeria, Pakistan, Philippines, Poland, Republic of Korea, Sri Lanka, Sweden, Switzerland, Turkey, Venezuela and Viet Nam. See UN-HABITAT (2002c) for relevant excerpts.

housing rights within their respective constitutions, and among those that have, many do not include comprehensive housing rights protections as recognised under international human rights law. In 1995, the Special Rapporteur of the Sub-Commission suggested, in order to clarify and strengthen the right to adequate housing, that –

*“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.”*⁷

Yet, the inclusion of housing rights at the constitutional level alone will not invariably lead to their implementation. Just as constitutional provisions guarantee human rights in all countries, no country can reasonably claim to have comprehensively implemented all its human rights obligations. The same logic applies to constitutional recognition of housing rights. Several practical issues complicate the relationships between law and practice, each of which contribute to an imperfect situation with respect to the real implementation of the human right to adequate housing:

- the legal and political problems relating to the enforcement of housing rights;
- the lack of clear and precise identification of legal responsibilities within national law to ensure these rights;
- failure to ensure that law and policy treat housing rights equitably; and
- the non-justiciability of certain constitutional norms.

At the same time, however, the absence of housing rights provisions within a constitutional framework does not necessarily imply bad faith on behalf of the State concerned. Nor does it mean that the enjoyment of housing rights will necessarily be less comprehensive than in States that have enshrined housing rights norms at the constitutional level. Countries with housing rights in the Constitution may fail to implement these guarantees, just as countries without constitutional recognition may have secured excellent satisfaction or fulfilment of housing rights. Be this as it may, the establishment of constitutional rights to adequate housing and the corresponding series of State obligations to create the legal, social and economic conditions necessary for the satisfaction by all of this right represent important legal foundations for further, more refined, legislative action and advocacy towards ensuring this right. Indeed, there are numerous positive examples of constitutionally recognised housing rights leading to very widespread enjoyment of this right by all or virtually all dwellers in a given country.

7. UN Doc. E/CN.4/Sub.2/1995/12, paragraph 164.

It should also be said that while considerable progress has been made in recent years, many national courts remain reluctant to entertain petitions dealing with the broad category of economic, social and cultural rights, which in turn affects housing rights. When legislatures include housing rights clauses within the highest laws of the land, this does not signify merely a political commitment. Rather, the inclusion of such standards within national constitutions (and indeed within all formulations of domestic legislation) reveals the attempt on behalf of the legislature to conceptualise and frame adequate housing in a way which assures that everyone possesses not just housing ‘needs,’ but is entitled to adequate housing as a matter of human rights. As a result, judges are being increasingly called upon to play a role in the implementation of housing rights, and the growing body of ‘housing rights case law’ is evidence of this important development.⁸ There are important steps being made throughout the world in achieving judicial consideration of housing rights standards. The recent *Grootboom* case in South Africa represents a very positive case in this regard.⁹

The constitutional recognition of housing rights, or more general governmental duties relevant to the housing sphere, are rarely, if ever, sufficient to guarantee that adequate housing will be ensured for everyone, or that housing will be treated, in practice, as a human rights issue. Obviously, existing laws – protecting security of tenure rights, equality of treatment provisions or legal measures prohibiting racial or other forms of housing discrimination – can provide significant legal protection to those entitled to housing as a human right. Such measures, however, are often not enough to cover or protect the entire range of the entitlements arising from the legislative recognition of housing rights. Consequently, the law often falls short of addressing the full spectrum of housing rights issues. This raises the question as to whether or not States are actually required to provide national legislative protection in order to implement internationally accepted housing rights standards.

III.B. Are states required to adopt national legislation in support of housing rights?

Constitutional housing or housing rights provisions can act as a solid basis upon which to construct implementing legislation concerning the bundle of entitlements and obligations arising from the right to adequate housing. Indeed, all countries, notwithstanding constitutional housing norms, maintain domestic laws relating to one degree or another on housing rights. Only a relatively small

8. See, for example COHRE, 2002.

9. See UN-HABITAT, 2002a.

number of countries, however, have enacted domestic legislation giving discernible substance to certain elements of housing rights. Most countries, unfortunately, have failed to adopt the full extent of law necessary to ensure the widespread enjoyment of housing rights.

International human rights law offers States some degree of discretion as far as the adoption of national legislation as a means of implementing international standards is concerned. It is, however, clearly supportive of the adoption by States of national legislation recognising human rights, including housing rights. The Limburg Principles provide useful guidance as to whether national legislation is actually an obligation under the Covenant. Limburg Principle No. 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 limited to, the undertaking of legislative measures. If the ‘steps’ taken are not sufficient to achieve the enjoyment of housing rights for everyone, it is nonetheless clear that legislative steps would have to be contemplated. General Comment No. 4 reiterates that “*the role of legislative and administrative measures should not be underestimated.*” State Parties to the Covenant are legally obliged to adopt domestic legislation giving full effect to international housing rights obligations. Moreover, an analysis of State practice and international legal perspectives on this issues suggest that such laws are strongly encouraged also for non-State Parties to the Covenant. Indeed, to one degree or another, this national legal recognition is already in place in all countries. In fact, the legislative regulation of matters with a direct influence on the fulfilment of housing rights is now so widespread at the national and local levels that it may be more appropriate to ask how, rather than if, such legislation should be formulated.

There are, at the same time, however, certainly cases when 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 that include housing rights, legislation must be enacted to repeal such legislation or to create new legal standards. Principle 18 of the Limburg Principles reinforce this point unequivocally, stating that –

“Article 2(1) [of the Covenant] would often require legislative action to be taken in cases where existing legislation is in violation of the obligations assumed under the Covenant”.

Under the Covenant, States Parties are required to submit reports every five years on the legislative and other measures they have taken to ensure compliance with the legal duties stipulated in this instrument. These reports shall be prepared in accordance with a series of detailed guidelines put forth by the Commission. The guidelines relating to the housing rights norms established under the Covenant provide an extensive series of questions referring to the status of pertinent national legislation, thus indicating what the Committee has called the indispensable role of national legislative activities in pursuit of the right to housing.¹⁰

The Sub-Commission Special Rapporteur addressed this issue in several recommendations, suggesting for instance that –

10. Part (c) of the revised guidelines regarding the form and contents of reports to be submitted by States Parties under Articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights contains a broad request to States Parties to provide information on eleven distinct areas of legislation viewed by the Committee as relevant to the human right to adequate housing:

“(c) Please provide information on the existence of any laws affecting the realization of the right to housing, including:

- (i) Legislation which gives substance to the right to housing in terms of defining the content of this right;*
- (ii) Legislation such as housing acts, homeless person acts, municipal corporation acts, etc;*
- (iii) Legislation relevant to land use, land distribution, land allocation, land zoning, land ceilings, expropriations including provisions for compensation, land planning including procedures for community participation;*
- (iv) Legislation concerning the rights of tenants to security of tenure, to protection from eviction, to housing finance and rent control (or subsidy), housing affordability, etc;*
- (v) Legislation concerning building codes, building regulations and standards and the provision of infrastructure;*
- (vi) Legislation prohibiting any and all forms of discrimination in the housing sector, including groups not traditionally protected;*
- (vii) Legislation prohibiting any form of eviction;*
- (viii) Any legislative appeal or reform of existing laws which detracts from the 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; and*
- (xi) Legislation concerning environmental planning and health in housing and human settlements.” (UN Doc: E/C.12/1990/8, pp. 88-110).*

“States should seek to fully integrate the contents of General Comment No. 4 on the right to adequate housing (Art. 11(1) of the ICESCR into relevant national legislative and policy domains.”
[Moreover]

“the adoption of comprehensive national housing rights acts should be positively contemplated by States” [and]

*“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.”*¹¹

The Special Rapporteur also recommended to States parties to the ICESCR, to—
*“duly alter any domestic laws clearly incompatible with the housing rights provisions of the Covenant, and to take it fully into account in adopting any new legislation.”*¹²

Moreover, the United Nations Secretary-General has noted that there is a compelling need to create new legislation and effective mechanisms geared to the prevention of forced evictions at national, regional and international levels, with a view to enforcing the implementation mechanisms of the right to adequate housing.¹³

There are clearly advantages to pursuing housing issues within the context of housing rights and subsequently codifying these rights within domestic legislation. Perhaps most importantly, legislation allows injured parties or those whose housing rights have been violated to seek judicial redress. Furthermore, 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 the economically marginalized populations. Additionally, 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 provide important incentives towards ensuring substantive equality of treatment throughout societies, which in turn transcend purely moral, ethical or humanitarian claims to adequate housing for all people.

11. UN Doc. E/CN.4/Sub.2/1995/12, paragraphs 161, 162 and 165.

12. UN Doc. E/CN.4/Sub.2/1995/12, paragraph 179.

13. UN Doc. E/CN.4/1994/20, paragraph 144.

III.C. Is national legislation sufficient?

As mentioned above, the adoption of national legislation is not necessarily obligatory, but is nonetheless, in many instances, indispensable for the comprehensive enjoyment of housing rights at the national level. This begs the question: does the creation of national legislation satisfy all legal obligations assumed by States accepting such duties through, *inter alia*, the recognition of housing rights, whether nationally or internationally?

The scale of housing deprivation and housing-related human rights violations throughout all corners of the world clearly raise doubts as to the sufficiency or effectiveness of legislative strategies towards ensuring the enjoyment of the right to adequate housing by all sectors in any society. Consequently, it is sometimes claimed that policy-based or socially strategic approaches to the global housing crisis can provide for more effective solutions. This implies that the pursuit of appropriate legal arrangements to secure the full enjoyment of housing rights will be invariably futile. In a best case scenario, it is argued, it will at best protect those with adequate housing, but it will do desperately little for those without.

Such distinctions, however, obscure the positive role that can, under the right circumstances, be played by law in rectifying social injustices stemming from the non-enjoyment of housing rights. While law should not be seen as the only way to ensure housing rights, it is unique in its ability to both establish and define clear state obligations in the area of housing. Moreover, it offers advocates at all levels an important tool that can be used as part of a larger movement aimed at positive and progressive change.

The legislation discussed in this report, therefore, should neither be viewed as necessarily sufficient to ensuring compliance with international housing rights obligations, nor as evidence that a particular State has no obligations regarding relevant legislation whatsoever. Rather, these laws reveal that while much has already been accomplished at the national level, far more work will be required if internationally recognized housing rights norms are to be fully implemented and enforced at the national and local levels. Clearly, laws alone are not sufficient to ensure that all persons in all countries will be able to enjoy their lawful housing rights, but they are an essential element.

IV. National legislation on housing rights

Many States have incorporated housing rights norms into their respective national constitutions or national legislative frameworks. In several cases, these constitutional or legislative texts are modelled after international standards and norms. By enshrining housing rights in national legislation, States not only fulfil their respective international legal obligations; they also create legal systems that empower individuals and groups to enforce their rights. Reliance on international law to inform domestic law will result in greater consistency across domestic legal systems with respect to universally recognised human rights. Furthermore, States that turn to international law for guidance benefit from the process by which international law is derived. This process often takes a ‘best practices’ approach. International law is influenced by a variety of ideas stemming from diverse legal, political, economic and cultural traditions. The process of codifying norms into international law reflects the acceptance of those ideas that have been deemed by the international community to be not only ‘best practices’ but also universally applicable.

Although all States are parties to one or more international instruments that protect housing rights, as outlined in chapter III above, it remains vital for States to consider incorporating housing rights into the national legislative framework. This is particularly important in countries where the dominant legal system makes the direct implementation of an international treaty impossible without subsequent national legislation specifically designed to give substance to the international treaty. In those legal systems, courts may find it difficult to recognise international law as creating private causes of action. Victims of human rights abuses, therefore, are often unable to avail themselves of their domestic judicial systems either to enforce their human rights or to seek redress for violations of those rights.

This chapter sets out some of the ‘legislative best practices’ of how housing rights are protected under national legal systems. Examples of constitutional and legislative provisions addressing general housing rights policy as well as specific components such as prohibitions against forced eviction, security of tenure, prohibition against discrimination in the field of housing, access to housing for children, and provision of housing for the poor are provided.¹ Although housing rights law must be tailored to some degree to fit the existing national legal system in question, the basic components of housing rights, as articulated in international law, can and should be universally protected.

1. A more comprehensive collection of national housing rights laws can be found in UN-HABITAT, 2002c.

The following thematic sub-chapters have been chosen because they are good examples of –

- how the components which comprise housing rights under international law are protected in national law; or
- broader areas of the law, such as urban development policy, which include housing rights as essential elements.

Following, therefore, are constitutional clauses or relevant excerpts from legislation dealing with –

- constitutional protections;
- general policy statements on housing rights;
- legal security of tenure;
- protection from forced eviction;
- protection from forced eviction by non-state actors;
- non-discrimination;
- non-discrimination with respect to gender issues and customary law;
- provision of affordable housing for the poor;
- accessibility (primarily for persons with disabilities);
- housing restitution;
- habitability;
- homelessness; and
- land rights.

IV.A. Constitutional protection

International law recognises that constitutional protection is one of the most effective means by which to guarantee rights, including the right to adequate housing. Approximately 40 per cent of the world countries, representing various legal, social and cultural traditions, have indeed enshrined the right to adequate housing in their respective constitutions (see table 1).

Constitutional protection of housing rights provides one of the strongest national statements with respect to those rights. Furthermore, it also provides valuable tools for those wishing to enforce housing rights. On one level, establishing clear norms at the national level with regard to housing rights in and of itself may serve as an important agent of social change, by raising the profile of housing issues and introducing ‘housing rights’ language. From a legal standpoint, constitutional clauses can not only be enforced in their own right. They can also be used to interpret and define housing rights embodied in national legislation and regulations. Furthermore, sound constitutional clauses, particularly those informed by international human rights law, will help ensure that retrogressive or other harmful legislation will not be adopted.

Table 1. Countries with constitutions containing reference to housing rights

Afghanistan	Equatorial Guinea	Paraguay
Argentina	Estonia	Peru
Armenia	Ethiopia	Philippines
Austria	Fiji	Poland
Bahrain	Finland	Portugal
Bangladesh	Germany	Republic of Korea
Belgium	Guatemala	Russian Federation
Bolivia	Guyana	Saint Lucia
Bosnia and Herzegovina	Haiti	Sao Tome and Principe
Brazil	Honduras	Seychelles
Burkina Faso	Hungary	Slovakia
Cambodia	Iran (Islamic Republic of)	Slovenia
China	Jordan	South Africa
Colombia	Kyrgyzstan	Spain
Costa Rica	Mali	Sri Lanka
Cuba	Mexico	Suriname
Democratic People's Republic of Korea	Namibia	Sweden
Democratic Republic of the Congo	Nepal	Switzerland
Dominica	Netherlands	Turkey
Dominican Republic	Nicaragua	Ukraine
Ecuador	Nigeria	Uruguay
El Salvador	Pakistan	Venezuela
	Panama	Viet Nam
	Papua New Guinea	

Source: UN-HABITAT, 2002c (which contain relevant excerpts from the constitutions of all countries listed above).

Alternatively, if adopted, it helps ensuring that they can be challenged and overturned in the judicial arena.

The Constitution of South Africa (see box 1) provides one of the best examples of a State incorporating its international human rights obligations into its constitution. Article 26 of the Constitution contains provisions closely mirroring the right to adequate housing as articulated in Article 11(1) of the ICESCR – including, in paragraph 3, the prohibition of forced eviction. This close parallel between national and international law also helps to ensure that interpretations of housing rights at the international level may more directly affect the interpretation of these rights at the national level. As the language so closely mirrors international law, this may suggest that international legal interpretations of this same language may carry more weight at the national level than it otherwise might. Indeed, the Supreme Court of South Africa did just that in the *Grootboom* case (sub-chapter V.F below).

Box 1. South Africa: Constitution (1996)

Article 26. Housing

- (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) 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.

Article 28. Children

- (1) Every child has the right - to ... shelter....

With respect to children, Article 28 of the constitution provides further guarantees in line with the Convention on the Rights of the Child (see box 1). South Africa thus provides an example of how constitutional clauses can be crafted to create pre-eminent protection of housing rights. South Africa's constitutional protections not only impact all subordinate laws such as legislation and regulations, but offer the bearers of the constitutional

Box 2. Argentina: Constitution (1994)

Article 14bis

The State shall grant the benefits of social security, which shall be comprehensive and unwaivable. In particular, the law shall establish: ... access to decent housing.

Article 75

The Congress shall have the power:

22. To approve or reject treaties entered with other nations and with international organizations, and concordats with the Holy See. Treaties and concordats have a higher standing than laws.

The following [international instruments], under the conditions under which they are in force, stand on the same level as the Constitution, [but] do not repeal any article in the First Part of this Constitution, and must be understood as complementary of the rights and guarantees recognized therein: the American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and its Optional Protocol; the [International] Convention on the Prevention and Punishment of Genocide; 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 against Torture and other Cruel, Inhuman or Degrading Treatments or Punishment; the Convention on the Rights of the Child.

Source: Translation by Jonathan M. Miller and Fan-Lian Liao, in Flanz, (ed.), 1999a.

protections and their advocates the tools necessary to enforce their housing rights.²

The Constitution of Argentina (see box 2) provides one of the best examples of how a State has not only constitutionally protected the right to adequate housing, but has explicitly mandated that international human rights instruments be relied upon in order to interpret the meaning of that right. Such general constitutional clauses that explicitly give pre-eminent constitutional force to a State's international human rights obligations are very important. They have the result that all the various international housing rights, and indeed all human rights, impact upon the interpretation of subordinate national law,

Box 3. Portugal: Constitution (1976, fourth revision based on Constitutional Law No. 1/97 of 20 September 1997)

Article 65. Housing and Urban Planning

(1) All have the right, both personally and for their family, to a dwelling of adequate size, that meets satisfactory standards of hygiene and comfort and preserves personal and family privacy.

(2) In order to ensure the right to housing, it is incumbent on the State to:

(a) draw up and implement a housing policy as part of general national planning and to support plans for urban areas that guarantee an adequate network of transport and social facilities;

(b) promote, in conjunction with local authorities, the construction of economic and social housing;

(c) promote private construction, when in the public interest, and access to privately owned or rented dwellings; and

(d) encourage and support the initiatives of local communities for the resolution of their housing problems and for promoting the establishment of housing cooperatives and their own building projects.

(3) The State shall adopt a policy for the institution of a system of rents that are compatible with family incomes and for individual ownership of housing.

(4) The State, the autonomous regions and the local authorities shall determine the regulation on occupancy, use and transformation of urban land, specifically by way of planning instruments, within the framework of laws relating to national planning and urban planning and shall compulsorily acquire such land as is necessary to satisfy the purposes of urban public utility.

(5) Interested parties shall be guaranteed participation in the drawing up of urban planning instruments and any other instruments for physical planning of the territory.

Source: Translation by Gisbert H. Flanz, in Flanz, (ed.), 1999b.

2. For an example of such enforcement, see the analysis of the *Grootboom* case in section V.F. More elaborate excerpts from this case can be found in UN-HABITAT, 2002a.

and thus provide valuable enforcement mechanisms. As such, similarly phrased constitutional clauses should be encouraged for inclusion into all constitutional frameworks as a means of bringing international human rights principles, standards and norms into domestic legislative interpretations and judicial analyses and opinions.

The Constitution of Portugal (see box 3) provides yet another good example of how a country has constitutionally protected the right to adequate housing. It also exemplifies how it delegates certain housing rights obligations to its domestic political organs. Additionally, this constitutional protection goes one step further by ensuring that housing rights are addressed and protected at the local level by making these rights the prerogative of regional and local programmes. As such, the Portuguese Constitution allows for decentralisation while allowing for federal oversight to ensure that regional and local authorities abide by minimum housing rights standards.

IV.B. General policy statements on housing

As noted above, most States have expressed components of general housing policies in their national legislation.³ General policy statements regarding the promotion and protection of housing rights are not only enforceable legal standards in their own right. They can be used to determine the context in which national housing policy should be read. Such statements therefore can be used to interpret the legislative intent of more specific housing rights law.

Box 4. Philippines: The Urban Development and Housing Act of 1992 (Republic Act No. 7279)

Section 2. Declaration of State Policy and Program Objectives:

It shall be the policy of the State to undertake, in cooperation with the private sector, a comprehensive and continuing Urban Development and Housing Program, hereinafter referred to as the Program, which shall:

(a) Uplift the conditions of the underprivileged and homeless citizens, in urban areas and in resettlements areas by making available to them decent housing at affordable cost, basic services, and employment opportunities;

(b) Provide for the rational use and development of urban land in order to bring about the following:

(continues...)

3. Relevant excerpts from various pieces of national legislation from 48 countries can be found in UN-HABITAT, 2002c.

Box 4. (continued).

- (1) Equitable utilization of residential lands in urban and urbanizable areas with particular attention to the needs and requirement of the underprivileged and homeless citizens and not merely on the basis market forces;
 - (2) Optimization of the use and productivity of land and urban resources;
 - (3) Development of urban areas conducive to commercial and industrial activities which can generate more economic opportunities for the people;
 - (4) Reduction in urban dysfunctions, particularly those that adversely affect public health, safety and ecology; and
 - (5) Access to land and housing by the underprivileged and homeless citizens;
- (c) Adopt workable policies to regulate and direct urban growth and expansion towards a dispersed urban net and more balanced urban-rural interdependence;
- (d) Provide for an equitable land tenure system that shall guarantee security of tenure to program beneficiaries but shall respect the rights of small property owners and ensure the payment of just compensation...

Housing rights form an essential component of any urban development scheme and have been recognized by the United Nations, as an essential component of good urban governance. Box 4 provides an example of this, e.g. the Urban Development and Housing Act of the Philippines.

Similarly, housing rights form an important component of rural development. Housing rights are particularly critical for the protection of agricultural workers and indigenous communities, especially in situations where land expropriation may otherwise result in homelessness, mass displacement or the destruction of sustainable communities. Indonesia provides an example on how the State manages the natural resources (land, waters and air space) affected by rural development (see box 5).

Box 5. Indonesia: Basic Agrarian Law, Law No. 5 (1960)

Article 2.

- (1) As per the basic regulation in Article 33(3) of the Constitution and subjects as mentioned in Article 1 on land, waters and air space including natural resources affected by development, managed by the State, as an entity of power for the entire population.
- (2) The management by the State as stated in paragraph 1 give authority to:
 - (a) arrange and to take care of the purpose, usage, preparation and maintenance and cultivation of the said land, water and air space;

(continues...)

Box 5. (continued).

(b) specify and put in order the law on the relationship between the people with the land, water and air space; and

(c) specify and put in order the law on the relationship between the people and the action of law with regards to land, water and air space.

(3) The right derived from the management function of the said State as stated in paragraph 2 of this article is use to improve the community's prosperity, meaning happiness, safety and independence as defined by Indonesian sovereignty and the judicial system.

Article 4.

(1) As per basic rights of authority from the State as stated in Article 2, it is confirmed that the presence of the different rights for the earth's surface which is the land, is to be given to and owned by the people, either personally or together with other people and also with judicial bodies.

(2) The rights over the land mentioned in paragraph 1 of this Article gives the authority to use the said land and also the contours of the land and water and space necessary for the usage of the land in accordance with the limitations as per these laws and other eminent judicial regulations.

Article 16.

(1) Rights on land and water as mentioned in Article 4 (1) are the following: (a) Rights of ownership; (b) Rights on initiative utilization; (c) Rights on building use; (d) Rights of usage; (e) Rights of lease; (f) Rights to clean the land; (g) Rights to harvest the products of the land; (h) Other rights, not included in the rights mentioned above but which have been stipulated under article 33 of the Constitution.

Source: Unofficial translation.

IV.C. Legal security of tenure

Security of tenure is a fundamental component of housing rights. General Comment No. 4 declares that the right to adequate housing requires that

“all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States Parties [to the ICESCR] 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.”⁴

4. General Comment No. 4, paragraph 8(a).

Again, General Comments are considered authoritative interpretations of the rights embodied in the Covenant, and are used by the Committee on Economic, Social and Cultural Rights when monitoring States Parties' implementation of Covenant provisions.

General Comment No. 4 also recognised that –

*“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.”*⁴

Moreover, it states that the above requirements are applicable *“notwithstanding the type of tenure.”* In other words, the appropriate tenure protections, as described in General Comment No. 4, are human rights that all dwellers possess, whether they own their homes, rent their homes, reside in informal settlements, or have some other form or relationship with their shelter.

The Commission on Human Rights has urged –

*“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.”*⁵

Conferring security of tenure not only implements a significant aspect of housing rights. It also creates an incentive for dwellers to invest in their housing because the fear of arbitrary loss of their housing is greatly diminished.

Security of tenure is related to both housing rights and sustainable natural resource management. Security of tenure must be a condition for both sustainable urban and rural development.⁶ Therefore, security of tenure is not only essential with respect to housing, but also with respect to the land on which housing is situated. First, although some housing may be readily mobile, it is important that a secure location is provided in order to maintain some social and economic connections that security of tenure vis-à-vis housing aims to protect. Second, for certain types of tenure, such as titled ownership, the land is usually the most valuable asset. Those possessing secure land tenure can thus use that as a store of wealth against which they can leverage financial assistance, such as loans. Finally, for many the resources provided by land are essential for the provision of food and water as well as for general economic self-sufficiency. Security of tenure also provides further protection against the

5. UN Doc. E/CN.4/RES/1993/77, operative paragraph 3.

6. See Magel, 2001.

arbitrary deprivation of property, whether that property is housing or land. The international community explicitly recognised that –

*“access to land and legal security of tenure are strategic pre-requisites for the provision of adequate shelter for all and for the development of sustainable human settlements”*⁷

It thus committed itself to *“providing legal security of tenure and equal access to land to all people.”*⁸

Peru provides one of the more innovative and successful examples of how a government is dealing with the issue of security of tenure, particularly for informal settlements. In 1996, Peru embarked on a national regularisation policy by which it aimed to formalise informal settlements. This policy was officially enacted with the adoption of the Law for the Promotion of Access to Formal Property (see box 6), and the establishment of the Commission for Formalisation of Informal Property. Central to the success of this policy was the elimination of the tedious and time-consuming bureaucratic system that, prior to 1996, was used to provide (but in most cases prevented) access to legal title to real estate.

Legal security of tenure takes many forms, but all involve providing dwellers with some form of due process designed to protect them from arbitrary deprivation of housing rights, including protection from forced

Box 6. Peru: Peruvian Law for the Promotion of Access to Formal Property. Legislative Decree No. 803 (1997)

The Peruvian Law for the Promotion of Access to Formal Property – Legislative Decree No. 803 (Ley de Promoción del Acceso a la Propiedad Formal – Decreto Legislativo No. 803) declares that providing Peruvian citizens access to formal property, and providing a mechanism for the registration of property, are in fact matters of national importance. The law further recognises that such measures are necessary for the protection of the basic property rights of citizens. To this end, Title 1, Article 2 of the law provides for the creation of an autonomous Commission for the Formalization of Informal Property (Comisión de Formalización de la Propiedad Informal – COFOPRI) which has responsibility, *inter alia*, for formulating, approving and executing a Programme for the Formalization of Property (as stipulated in Title 1, Article 3). The law also addresses the reorganisation of administrative procedures and processes for the formalisation of property (Title 2), the appropriation of state lands for the purposes of providing housing (Title 3), and other complimentary provisions (Title 4).

Note: For the full text (in Spanish), see UN-HABITAT, 2002c.

7. Habitat Agenda, paragraph 75.

8. Habitat Agenda, paragraph 61(b).

eviction. Legal security of tenure can be and in many cases has been incorporated into national legislation with respect to various forms of tenure, whether ownership, rental and informal tenure.⁹

IV.D. Protection from forced eviction

The practice of forced eviction involves the involuntary removal of persons from their homes or land, directly or indirectly attributable to the State. Often, forced evictions may take place during situations of armed conflict. They may also occur due to expropriation of land, development-based displacement,¹⁰ city ‘beautification’ programmes or societal patterns of discrimination. Regardless of cause, under international law, forced evictions are considered a *prima facie* violation of the right to adequate housing and a gross violation of human rights.¹¹ Forced evictions are often a particularly violent violation of housing rights, and often threaten the livelihood and security of individuals – dismantling communities and eroding social support networks. General Comment No. 7 (paragraph 9) states that –

“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 in 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... [Furthermore] the State’s obligation to ensure respect for that right is not qualified by considerations relating to its available resources.”

General Comment No. 7 also states that the prohibition against forced eviction is reinforced by the ICCPR, and in particular Article 17(1) which recognizes, *inter alia*, the right to be protected against ‘arbitrary or unlawful interference’ with one’s home. Importantly, the Committee on Economic,

9. Other examples related to security of tenure issues in informal and formal settlements can be found in UN-HABITAT, 2002c.

10. For more information regarding legal obligations and development-based displacement, see UN Doc. E/CN.4/Sub.2/1997/7, Annex: “The Comprehensive Human Rights Guidelines on Development-Based Displacement”.

11. See General Comment No. 7, paragraph 2; and UN Doc. E/CN.4/RES/1993/77, paragraph 1.

Social and Cultural Rights has also expressly stated that, in any event, evictions should not result in homelessness.

With respect to national legislation, General Comment No. 7 states:
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

Box 7. Philippines: The Urban Development and Housing Act of 1992 (Republic Act No. 7279)

Section 28. Eviction and Demolition

Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations: (a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, river banks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds; (b) When government infrastructure projects with available funding are about to be implemented; or (c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition order involving underprivileged and homeless citizens, the following shall be mandatory:

- 1) Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
- 2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
- 3) Presence of local government officials or their representatives during eviction or demolition;
- 4) Proper identification of all persons taking part in the demolition;
- 5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- 6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- 7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- 8) Adequate relocation, whether temporary or permanent.

Section 44. Moratorium on Eviction and Demolition

There shall be a moratorium on the eviction of all Program beneficiaries and on the demolition of their houses or dwelling units for a period of three (3) years from the affectivity of this Act: Provided, That the moratorium shall not apply to those persons who have constructed their structures after the affectivity of this Act and for cases enumerated in Section 28 hereof.

No. 3 (1990) 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 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 the Government greatly reducing its 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 they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

The Urban Development and Housing Act of the Philippines (see box 7) provides one of the better examples of national legislation dealing with the discouragement of forced evictions, the due process necessary to ensure that an eviction is not arbitrary, and the requirement that relocation and resettlement be offered to evictees.

IV.E. Protection from forced eviction by non-state actors

As mentioned above, according to General Comment No. 7, international law requires States to adopt legislative and other measures that are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. The United Kingdom's Protection from Eviction Act (see box 8) criminalizes the practice of forced eviction by non-state actors, in particular owners of housing units. The Act is one of the better examples of how a government can protect housing rights from forms of interference by non-state actors.

Box 8. United Kingdom: Protection From Eviction Act (1977, as amended by section 29 of the Housing Act 1988)

Section 1.

(1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him *[or her]* the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his *[or her]* occupation of the premises or any part thereof, or attempts to do so, he *[or she]* shall be guilty of an offence unless he *[or she]* proves that he believe, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises –

(a) to give up the occupation of the premises or any part thereof, or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

(c) does acts likely to interfere with the peace or comfort of the residential occupier or members of his *[or her]* household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence he *[or she]* shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if –

(a) he *[or she]* does acts likely to interfere with the peace or comfort of the residential occupier or members of his *[or her]* household, or

(b) he *[or she]* persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence, and (in either case) he *[or she]* knows, or has reasonable cause to believe, that the conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he *[or she]* proves that he *[or she]* had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(3C) In subsection (3A) above, “landlord,” in relation to a residential occupier of any premises, means the person who, but for –

(a) the residential occupier’s right to remain in occupation of the premises, or

(b) a restriction on the person’s right to recover possession of the premises, would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

(4) A person guilty of an offence under this section shall be liable –

(a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding six months or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

IV.F. Non-discrimination

General Comment No. 4 (paragraph 6) states that –

“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.”

Similarly, General Comment No. 7 (paragraph 11) states that –

“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 form of discrimination is involved.”

Importantly, General Comment No. 3 stresses that the obligation to “*guarantee that relevant rights will be exercised without discrimination*” and is of “*immediate effect.*” Therefore the ‘progressive realisation’ and the ‘extent of available resources’ clauses do not apply to the non-discrimination clauses found in Articles 2(2) and 3 of the Covenant.

The Canadian Province of Ontario contains in its Human Rights Code one of the more comprehensive laws protecting dwellers from discriminatory practices (see box 9). This law not only protects persons from discrimination expressly prohibited by the ICESCR, such as on account of race, sex or religion, but also expressly prohibits discrimination based on sexual orientation, marital status, same-sex partnership status, age, citizenship status, age, etc.

Box 9. Canada: Human Rights Code (1981). Statutes of Ontario (1981, chap. 53), as amended in 1984 (Chapter 58, s. 39 and 1986, Chapter 64, s. 18)

Sec. 2. (1). Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status, handicap or the receipt of public assistance.

Sec. 2. (2). Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, same-sex partnership status, family status, handicap or the receipt of public assistance.

Sec. 3a. (1). Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old.

IV.G. Non-discrimination: gender issues and customary law

One impediment to the full enjoyment of housing rights by women is often the existence of discriminatory customary law or traditional practices. The adoption of the Land Act by the Government of Uganda in 1998 (see box 10) provides one of the better examples of how the international principle of non-discrimination with respect to gender has been incorporated into national law and trump any contradictory customary laws. The relevant section of the Land Act refers to Article 33 of the Constitution which, *inter alia*, guarantees the equal treatment of women and men including equal opportunities in political, economic and social activities. Furthermore, Article 33 states that “*laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.*”

Box 10. Uganda: Land Act of 1998

Sec. 32 (1) Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally shall be in accordance with the custom, traditions and practices of the community, except that a decision which denies women or children or persons with disability access to ownership, occupation or use of any land or imposes conditions which violate Articles 33, 34 or 35 of the Constitution on any ownership, occupation or use of any land shall be null and void.

IV.H. Provision of affordable housing for the poor

Affordability is one of the essential elements of adequate housing. General Comment No. 4 (paragraph 8.c) articulates the requirement that –

“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 ... States Parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing

Box 11. Russian Federation: Constitution of the Russian Federation (1993)

Article 40.

- (1) Everyone has the right to a home. No one may be arbitrarily deprived of a home.
- (2) Organs of state power and organs of local self-administration encourage home construction and create conditions for the realization of the right to a home.
- (3) Citizens with low incomes and other citizens, defined by law, who are in need of housing shall be housed free of charge or for affordable pay from the state, municipal and other housing funds in conformity with the norms established by the law.

Source: Translation by Inter-University Associate, in Flanz, (ed.), 2002.

Box 12. France: Law 90/449 of 31 May 1990 (Law Aimed at the Right to Housing)

Article 1.

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 [or her] resources to meet his [or her] needs has the right to collective assistance under conditions fixed by law that will ensure access to decent and independent housing where he [or she] can maintain himself.

Article 4.

The departmental plan, established for a definite duration, define the categories of persons who in enforcement of the first article, can be called to benefit from it;

This plan must grant priority to persons and families without any accommodation or those threatened with eviction who have nowhere to move, or those living in slums, precarious or insalubrious dwellings or improvised accommodation;

The plan analyses the needs and basic salary, per housing pool of inhabitants, the objectives to guarantee the attainment of housing by the centralisation of their requests for housing, the creation of a supplementary offer of houses and the establishment of financial aid and accompanying specific social measures

The departmental plan is made public by the President of the General Counsel and the Representatives of the State in the department in accordance with opinions of the Departmental Council of Integration.

Article 7.

The financing of the “funds of solidarity” for housing are guaranteed by the State and the Department.

finance which adequately reflect housing needs.”

Additionally, the principle of affordability requires that –

“tenants should be protected by appropriate means against unreasonable rent levels or rent increases.”

The Government of France, in its Law 90/449 on the right to housing (see box 12), provides an example of how national legislation mandates public provision of affordable housing for those in need. The Constitution of the Russian Federation (see box 11) also provides an example of how the right to housing, and the provision of affordable housing, can be constitutionally enshrined. It is important to note that this Constitution was approved after the transition from a planned economy to a market-based system.

IV.I. Accessibility

Accessibility is another essential component of the international legal definition of adequate housing. General Comment No. 4 requires adequate housing to be accessible to everyone entitled to housing, including disadvantaged groups and

groups such as, but not limited to, 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. Additionally, General Comment No. 4 provides that housing law and policy should take fully into account the special housing needs of such groups, including policies to increase access to land by landless or impoverished segments of society.

In 1990, the United States of America adopted the Americans with Disabilities Act and incorporated its provisions into the United States Civil Rights Code. This Act provides, *inter alia*, legal protection to persons with physical and mental disabilities against discrimination in housing and public accommodations. See box 13 for relevant excerpts from this Act, which not only mandates State action with respect to housing accessibility and non-discrimination, but mandates private action as well.

In addition, the United States Civil Rights Code was amended by the Fair Housing Act to provide explicit protection against discrimination for persons infected by HIV/AIDS. According to the Fair Housing Act, it is illegal to discriminate against a person in the provision of housing because that person has HIV/AIDS, has a record of having HIV/AIDS, is perceived as having HIV/AIDS, is associated with persons with HIV/AIDS, or has a person with HIV/AIDS residing with them.

Box 13. United States of America: Civil Rights Code (as amended 1990, "Americans with Disabilities Act")

Section 12101. Findings and Purpose

(a) Findings

The Congress finds that –

- (1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
- (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- (3) discrimination against individuals with disabilities persist in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(continues...)

Box 13. (continued).

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity;

(b) Purpose

It is the purpose of this chapter –

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

IV.J. Restitution

Restitution is increasingly recognised as important remedies for violations of housing rights, including forced evictions. Furthermore, housing and property restitution is essential for the voluntary return of refugees and internally displaced persons to their original homes. Indeed, international law increasingly views the right to return as encompassing not merely the right to return to one's country of origin, but to return to one's original home.

Housing restitution is increasingly seen as the proper remedy for past injustices involving forced eviction, displacement and other forms of unlawful property expropriation. Many countries and other geographical regions have housing and property restitution legislation.¹²

South Africa provides one of the better examples of how housing and property restitution, as a remedy for past injustices, has been constitutionally recognised. The Constitution of South Africa recognises housing and property restitution as an essential element of the national healing process in the post-Apartheid era (see box 14).

Box 14. South Africa: Constitution, Article 25 (1996)

Article 25. Property

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

The United Nations regulation creating the Housing and Property Directorate for Kosovo, although not a national law *per se*, provides an innovative example. It exemplifies how the international community, working through the auspices of the United Nations, has responded to gross violations of human rights by creating a legal regime to deal with injustices which have occurred in a defined geographic region. The regulation is a prime example of how to deal with property issues in post conflict situations. Relevant excerpts which outline the powers of the Housing and Property Directorate can be found in box 15.¹³

12. See, e.g., Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, Germany, Rwanda, Slovenia, South Africa, Tajikistan, and the Federal Republic of Yugoslavia (Kosovo). Excerpts from these can be found in UN-HABITAT, 2002c.

13. The full text of this document can be found in UN-HABITAT, 2002c.

Box 15. Kosovo (Federal Republic of Yugoslavia): UNMIK Regulation No. 1999/23 (on the establishment of the Housing and Property Directorate and the Housing and Property Claims Commission) (15 November 1999)

Section 1 – Housing and Property Directorate

1. The Housing and Property Directorate (the “Directorate”) shall provide overall direction on property rights in Kosovo until the Special Representative of the Secretary-General determines that local governmental institutions are able to carry out the functions entrusted to the Directorate, in particular, the Directorate shall:

a. Conduct an inventory of abandoned private, state and socially owned housing;

b. Supervise the utilization or rental of such abandoned property on a temporary basis for humanitarian purposes; rental monies of abandoned private and socially owned property shall be recorded in a separate account in trust for the rightful owner, subject to deduction of relevant expenses;

c. Provide guidance to UNMIK, including CIVPOL, and UNHCR, as well as KFOR on specific issues related to property rights; and

d. Conduct research leading to recommended policies and legislation concerning property rights.

2. As an exception to the jurisdiction of the local courts, the Directorate shall receive and register the following categories of claims concerning residential property including associated property:

a. Claims by natural persons whose ownership, possession or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent;

b. Claims by natural persons who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989;

c. Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred.

The Directorate shall refer these claims to the Housing and Property Claims Commission for resolution or, if appropriate, seek to mediate such disputes and, if not successful, refer them to the Housing and Property Claims Commission for resolution.

The same United Nations Regulation also established the Housing and Property Claims Commission, and empowered it to adjudicate housing and property claims using the substantive standards outlined by the Housing and Property Directorate. Relevant excerpts that describe the establishment and powers of the Commission as well as the procedures by which it carries out its mandate are included in box 16.

Box 16. Kosovo (Federal Republic of Yugoslavia): UNMIK Regulation No. 1999/23 (on the establishment of the Housing and Property Directorate and the Housing and Property Claims Commission) (15 November 1999)

Section 2 – Housing and Property Claims Commission

1. The Housing and Property Claims Commission (the “Commission”) is an independent organ of the Directorate which shall settle private non-commercial disputes concerning residential property referred to it by the Directorate until the Special Representative of the Secretary-General determines that local courts are able to carry out the functions entrusted to the Commission.

2. The Commission shall initially be composed of one Panel of two international and one local members, all of whom shall be experts in the field of housing and property law and competent to hold judicial office. The Special Representative of the Secretary-General shall appoint the members of the Panel and shall designate one member as the chairperson. The Special Representative of the Secretary-General may establish additional Panels of the Commission in consultation with the Commission.

3. Before taking office, the members of the Commission shall make in writing the following solemn declaration:

“I solemnly declare that I will perform my duties and exercise my power as a member of the Housing and Property Claims Commission honourably, faithfully, impartially and conscientiously.”

The declaration shall be put in the archives of the Commission.

4. The Commission shall be entitled to free access to any and all records in Kosovo relevant to the settlement of a dispute submitted to it.

5. As an exception to the jurisdiction of local courts, the Commission shall have exclusive jurisdiction to settle the categories of claims listed in section 1.2 of the present regulation. Nevertheless, the Commission may refer specific separate parts of such claims to the local courts or administrative organs, if the adjudication of those separate parts does not raise the issues listed in section 1.2. Pending investigation or resolution of a claim, the Commission may issue provisional measures of protection.

6. The Special Representative of the Secretary-General shall establish by regulation the Rules of Procedure and Evidence of the Commission, upon the recommendation of the Commission. Such rules shall guarantee fair and impartial proceedings in accordance with internationally recognized human rights standards. In particular, such rules shall include provisions on reconsideration of decision of the Commission.

7. Final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo.

Applicable Law

The provisions of the applicable laws relating to property rights shall apply subject to the provisions of the present legislation.

IV.K. Habitability

Adequate habitability is enforced in many states through local ordinances addressing health, safety and services. It is advisable, however, for some oversight from federal, state or provincial governments. This should include consistent standards as established in national legislation that establish criteria that at a minimum meet international legal standards, including those laid out in General Comment No. 4. Such national oversight helps ensure that local municipalities devote the resources necessary to protect the housing rights of their respective residents and that they do so by abiding to minimum standards necessary to ensure adequate habitability. The Residential Tenancies Act No. 120, adopted by the Government of New Zealand in 1986, provides one example of federal legislation with respect to habitability (see box 17).

Box 17. New Zealand: The Residential Tenancies Act No. 120 (1986)

Part II Tenancy Agreements (Preliminary Matters)

Sec. 45. Landlord's responsibilities –

(1) The landlord shall:

- (a) Provide the premises in a reasonable state of cleanliness; and
- (b) Provide and maintain the premises in a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes; and
- (c) Comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises; and
- (d) Compensate the tenant for any reasonable expenses incurred by the tenant in repairing the premises where –
 - (i) The state of disrepair has arisen otherwise than as a result of a breach of the tenancy agreement by the tenant and is likely to cause injury to persons or property or is otherwise serious and urgent; and
 - (ii) The tenant has made a reasonable attempt to give the landlord notice of the state of disrepair.

(2) The landlord shall not interfere with the supply of gas, electricity, water, telephone services, or other services to the premises, except where the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.

IV.L. Homelessness

Homelessness is one of the most severe manifestations of the denial of housing rights. Conditions whereby individuals are involuntarily without a home place a country in violation of its international human rights obligations. Some countries have sought to combat homelessness by providing public/social

housing (see sub-chapter IV.H above). Yet, this approach has rarely been able to eliminate homelessness. States should therefore take a more holistic approach. They should not only provide housing, but should also make provisions for necessary social services that address physical and mental health, educational and vocational training, housing affordability, child care and other needs of homeless persons.

Additionally, laws should go beyond symptoms; they must address the causes of homelessness. Although the lack of affordable housing is an overarching cause, other contributing factors may include domestic violence, chemical dependency, societal discrimination, mental illness, etc.¹⁴ Again though, regardless of these contributing factors, housing remains under international law an entitlement of all, and States have the obligations to fulfil that entitlement for everyone.

Germany and Greece provide two examples of constitutional clauses addressing the housing needs of homeless persons. Although neither explicitly provides for ensuring that all persons have adequate housing available to them, they remain two of the better constitutional examples regarding homelessness.

The Constitution of the German State of Sachsen-Anhalt provides one of the best examples, in paragraph 2, of a State clearly and expressly acknowledging and accepting its obligation to prevent homelessness. The clause in paragraph 1, however, does not accurately define what measures the State must take to ‘support’ the provision of housing for those already suffering from homelessness (see box 18).

Box 18. Germany: Constitution of Sachsen-Anhalt (1992)

Article 40. Housing

(1) The State and local authorities have responsibilities to ensure support for the construction of housing, the maintenance of existing housing supplies and through other measures to guarantee dignified living space and adequate living conditions for everyone.

(2) The State and the local authorities shall ensure that no one becomes homeless.

The Constitution of Greece, meanwhile, recognises the State’s responsibility for providing housing to those “*who are homeless*,” but, similarly, the phrase “*shall be the subject of special attention by the State*” fails to adequately define what that “*special attention*” should entail and, similarly, doesn’t indicate that the State is directly responsible for the construction of housing (see box 19).

14. For a more comprehensive discussion of homelessness, see UNCHS (Habitat), 2000.

Box 19. Greece: Constitution (1975)

Art. 21(4). The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care.

Source: Translation by Louis Pagonis, in Flanz, (ed.), 1998.

The United Kingdom, in addition to providing social housing, has adopted the Homeless Persons Act in 1977. This legislation addresses homelessness by enacting statutory duties on housing authorities to assist those who are homeless or threatened with homelessness. Local housing authorities are statutorily obligated to secure housing for homeless or potentially homeless persons who are determined as being in priority need of housing (see box 20).

Box 20. United Kingdom: Homeless Persons Act (1977, as amended 1996)

Section 188

(1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his [*or her*] occupation pending a decision as to the duty (if any) owed to him [*or her*] under the following provisions of this Part.

Section 189

(1) The following have a priority need for accommodation-

(a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;

(b) a person with whom dependent children reside or might reasonably be expected to reside;

(c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;

(d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.

Section 193

(1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he [*or she*] became homeless intentionally.

(2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.

(3) The authority is subject to the duty under this section for a period of two years (“the minimum period”), subject to the following provisions of this section.

After the end of that period the authority may continue to secure that accommodation is available for occupation by the applicant, but are not obliged to do so (see section 194).

Note: For more details on this Act, see UN-HABITAT, 2002c.

IV.M. Land rights

Land rights have been increasingly recognised as fundamental to social and economic well being, particularly with respect to indigenous peoples. Indeed, the United Nations Special Rapporteur on indigenous peoples and their relationship to land has pointed out that –

“indigenous peoples have emphasized ... the fundamental nature of their relationship to their homelands ... [and] the urgent need for understanding by non-indigenous societies of the spiritual, social, cultural, economic and political significance to indigenous societies of their lands, territories and resources for their continued survival and vitality.”¹⁵

The Special Rapporteur also recommended that –

“countries where such legislation does not exist should enact legislation, including special measures, to recognize, demarcate and protect the lands, territories and resources of indigenous peoples in a manner that accords legal protection, rights and

Box 21. Draft Declaration on the Rights of Indigenous Peoples

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 26

Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

Article 27

Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.

15. UN Doc. E/CN.4/Sub.2/2001/21, paragraph 12.

*status at least equal to those accorded other lands, territories and resources in the country” [and that]
“such legislation must recognize indigenous peoples’ traditional practices and law of land tenure, and it must be developed only with the participation and free consent of the indigenous peoples concerned.”¹⁶*

In part due to the work of this Special Rapporteur over the years, the United Nations Sub-Commission approved the Draft Declaration on the Rights of Indigenous Peoples in 1994, which reaffirmed the lands rights of indigenous peoples (see box 21).¹⁷ Similar sentiments have been expressed by the United Nations Committee on Human Rights, in its General Comment No. 23, on Article 27 of the ICCPR,¹⁸ as well as by the United Nations Committee on the Elimination of Racial Discrimination in its General Recommendation XXIII on the rights of indigenous peoples.¹⁹

In addition to the attention given indigenous land rights by the United Nations human rights mechanisms, the ILO had recognised the unique role land plays in the lives of indigenous peoples. Part II of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), is specifically devoted to land rights. Box 22 provides excerpts from Part II of this Convention, which illustrates how the international community has begun to recognise and guarantee the rights of indigenous peoples to their lands and natural resources.

Box 22. International Labour Organization: Convention No. 169 concerning Indigenous and Tribal Peoples

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for

(continues...)

16. UN Doc. E/CN.4/Sub.2/2001/21, paragraphs 145 and 146 respectively.

17. UN Doc. E/CN.4/Sub.2/1994/2/Add. 1. The ‘Draft Declaration on the Rights of Indigenous Peoples’ is currently under consideration by the Commission on Human Rights and its Working Group established pursuant to Commission resolution 1995/32 (see UN Doc. E/CN.4/RES/1995/32).

18. United Nations Committee on Human Rights, General Comment No. 23, on Article 27 of the ICCPR

19. United Nations Committee on the Elimination of Racial Discrimination, General Recommendation XXIII on the rights of indigenous peoples.

Box 22. (continued).

their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

V. Enforcing housing rights

This chapter examines the enforceability of housing rights within the context of international economic, social and cultural rights law as well as within the context of regional and national legal regimes. It also discusses various judicial and quasi-judicial remedies for housing rights violations. Importantly, the chapter also offers lessons for civil society, NGOs, CBOs, housing rights advocates and others on how to craft litigation or other advocacy strategies for the promotion and enforcement of housing rights. These lessons should provide interested entities and individuals with additional tools for the promotion and protection of housing rights in international, regional and national judicial and quasi-judicial fora.

V.A. Violations of economic, social and cultural rights

It is still sometimes claimed that by their very nature, economic, social and cultural rights, including the right to adequate housing, are not capable of being violated or enforced within a legal framework. Such interpretations, however, are not supported by principles of international human rights law, nor by those bodies mandated to implement and enforce economic, social and cultural rights at the international level. In 1993, the international community adopted by consensus the Vienna Declaration and Programme of Action at the World Conference on Human Rights. One of the most important clauses (paragraph 5) of the Vienna Declaration is the explicit reaffirmation that –

“all human rights are universal, indivisible and interdependent and interrelated” and that “the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”

The international community has consistently reaffirmed that indivisibility, interdependence and interrelatedness form the definitive conception of human rights, be they civil, cultural, economic, political, or social in nature. The enforceability and justiciability aspects of economic, social and cultural rights, therefore, are to be considered on an equal footing with civil and political rights. Thus, the fact that some economic, social and cultural rights require Government expenditure to be realised does not necessarily – contrary to some views – set them apart from civil and political rights. For example, the right to a fair trial, one of the key civil rights articulated in international human rights law, requires immense public expenditures – on the administration of justice, including the training and hiring of judges, prosecutors, public defence attorneys, and other court staff – in order to fully protect this right as envisaged in the ICCPR and other international and regional instruments protecting the right to a fair trial.

Similarly, the right not to be subject to cruel, degrading or inhumane treatment or punishment requires, *inter alia*, expenditure for well-trained police forces as well as for penal institutions and well-trained prison staff. Few argue that components of the right to a fair trial or the right to not be subjected to cruel, degrading or inhumane treatment or punishment cannot be realised immediately. Likewise, certain aspects of economic, social and cultural rights have immediate obligations, and those aspects that are to be realised progressively include criteria that lend themselves to immediate scrutiny.¹

General Comment No. 3 provides detailed insights into the precise obligations of States Parties to the ICESCR with respect to Article 2(1). It notes in paragraph 1 that –

“while the Covenant provides for progressive realisation and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect.”

Two of those immediate obligations are to ‘undertake to guarantee’ that the relevant rights ‘will be exercised without discrimination’ and the obligation to ‘to take steps’ to achieving the full realization of the rights embodied in the ICESCR. The principles set forth in General Comment No. 3 are further explained in the Maastricht Guidelines, which are also useful in illustrating when and how violations of economic, social and cultural rights occur. Indeed, the Maastricht Guidelines – in Guidelines 14 and 15 respectively – enumerate seven ways in which economic, social and cultural rights can be violated by acts of commission and ten ways in which such rights can be violated through acts of omission.²

The obligation to guarantee economic, social and cultural rights without discrimination obviously does not require resources for implementation. Regardless of the level of economic development, economic, social and cultural rights must be protected on equal terms and without discrimination on account of ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’ Furthermore, as the practice of several States illustrates, violations of non-discrimination clauses are justiciable and victims can avail themselves of both legal and equitable remedies. In other words, courts can order monetary damages to compensate victims of discrimination as well as order the immediate cessation of the discriminatory action or the immediate nullification of discriminatory laws.

1. Leckie, 1998a.

2. For the full text of the Maastricht Guidelines, see UN-HABITAT, 2002b.

The obligation to ‘take steps’ is likewise immediate. Paragraph 2 of General Comment No. 3 states that:

“While the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”

The language of General Comment No. 3 not only clearly states that economic, social and cultural rights can be protected immediately to some degree, but also implies that that protection can be judicially enforced. Terms such as ‘reasonably short time’ and ‘deliberate, concrete and targeted as clearly as possible’ are clearly susceptible to judicial interpretation and can be given more precise meaning through the development of case law and similar jurisprudence. General Comment No. 3 also articulates the principle of prohibition on deliberately retrogressive measures by States, such as the repeal of beneficial legislation, which erode the protection of the economic, social and cultural rights already enjoyed. The Maastricht Guidelines similarly provide a strong prohibition against deliberately retrogressive measures, stating in Guideline 14(e) that

“[t]he adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed constitutes a violation through an act of commission.”

Finally, the principle of ‘minimum core obligations’ is essential to determining when violations of economic, social and cultural rights occur, as well as in establishing when judicial remedies for such violations are appropriate. The principle of minimum core obligations holds that it is incumbent upon States to ensure minimum essential levels of economic, social and cultural rights. Under the ICESCR, for example, if a significant number of individuals are deprived of basic shelter and housing then this constitutes a *prima facie* failure to realise the right to adequate housing.

V.B. Violations of housing rights

Housing rights can be violated just as any other human rights. The Committee on Economic, Social and Cultural Rights noted in 1991 that –

*“the right to housing can be subject to violation. Acts and omissions constituting violations will need to be explored by the Committee, especially in the context of forced evictions.”*³

3. UN Doc. E/C.12/1990/3, p. 72.

General Comment No. 4 stipulates circumstances amounting to violations of the housing rights provisions of the Covenant, including the view that –

“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.” (paragraph 18).

The Committee has castigated several States parties for violating Article 11(1) of the ICESCR because of the prevalence and massive scale of forced evictions sponsored and carried out by the government.⁴ Likewise, the Committee has criticised States parties whose laws, including inheritance laws, discriminate with respect to housing rights.

Elsewhere within the United Nations, the practice of forced evictions has been repeatedly recognised as *“a gross violation of human rights, in particular the right to adequate housing.”*⁵ These decisions have initiated a dynamic process emphasising to governments both the need for immediate measures at all levels aimed at eliminating the practice of forced eviction, and the importance of providing immediate, appropriate and sufficient compensation and/or alternative accommodation. Such compensation and/or alternatives should be consistent with the wishes and needs of persons and communities forcibly or arbitrarily evicted, following mutually satisfactory negotiations with the affected person(s) or group(s).⁶ These unambiguous legal interpretations and other normative statements on forced evictions by a range of United Nations bodies provide an indication of the consensus concerning one of the most obvious violations of housing rights.

The Special Rapporteur of the Sub-Commission has also devoted substantial attention to specific acts and omissions by States which amount to violations of housing rights. In addition to outlining earlier proclamations as to what would constitute housing rights violations, the Special Rapporteur outlined a series of acts and omissions which could provoke concern regarding possible infringements of those rights. These merit a full reiteration, as several

4. See UN Docs. E/C.12/1990/8, pp. 55-65, in particular, paragraph 249; and E/C.12/1991/4, p. 32, paragraph 135.

5. See UN Docs. E/CN.4/RES/1993/77; E/CN.4/Sub.2/RES/1991/12; E/CN.4/Sub.2/RES/1994/39; E/CN.4/Sub.2/RES/1995/29; E/CN.4/Sub.2/RES/1996/27; E/CN.4/Sub.2/RES/1997/6; and E/CN.4/Sub.2/RES/1998/9.

6. See UN Docs. E/CN.4/1993/77; E/CN.4/Sub.2/RES/1991/12; E/CN.4/Sub.2/RES/1992/14; E/CN.4/Sub.2/RES/1993/41; E/CN.4/ Sub.2/RES/1994/39; E/CN.4/Sub.2/RES/1995/29.

Box 23. Examples of acts constituting housing rights violations

- (1) Carrying out, sponsoring, tolerating or supporting the practice of forced evictions;
- (2) Demolishing or destroying homes or dwellings as a punitive measure;
- (3) Actively denying basic services such as water, heating or electricity, to sectors of society, despite a proven ability to provide these;
- (4) Acts of racial or other forms of discrimination in the housing sphere;
- (5) Adoption of legislation or policies clearly inconsistent with housing rights obligations, particularly when these result in homelessness, greater levels of inadequate housing, the inability of persons to pay for housing and so forth;
- (6) Repealing legislation consistent with, and in support of, housing rights, unless obviously outdated or replaced with equally or more consistent laws;
- (7) Unreasonable reductions in public expenditures on housing and other related areas, in the absence of adequate compensatory measures;
- (8) Overtly prioritising the housing interests of high-income groups when significant portions of society live without their housing rights having been achieved;
- (9) Constructing or allowing the building of housing upon unsafe or polluted sites threatening the lives and health of future occupants; and
- (10) Harassing, intimidating or preventing non-governmental and community-based organizations and grassroots movements and groups concerned with housing rights from operating freely.

Source: UN Doc. E/CN.4/Sub.2/1993/15, paragraph 144.

of them are directly relevant to the issue of domestic housing rights legislation (see box 23 and box 24 for details).

The Commission on Human Settlements has similarly urged States to cease:

*“[A]ny practices which could or do result in infringements of the human right to adequate housing, in particular the practice of forced mass evictions and any form of racial or other discrimination in the housing sphere [and to] repeal, reform or amend any existing legislation, policies, programmes or projects which in any manner negatively affect the full realization of the right to adequate housing”.*⁷

These formulations of what constitutes a violation of housing rights should put to rest any doubt that these rights are somehow different, particularly with respect to their enforceability and judiciability, from other

7. Commission on Human Settlements resolution 14/6 ‘The Human Right to Adequate Housing’ (3 May 1993). See UN Doc. A/48/8.

Box 24. Examples of omissions constituting housing rights violations

- (1) Failing to take “appropriate steps” as required under the Covenant on Economic, Social and Cultural Rights;
- (2) Failing to reform or repeal legislation inconsistent with the Covenant;
- (3) Failing to enforce legislation inherent in the fulfilment and recognition of housing rights;
- (4) Failing to intervene in the housing market, especially concerning rent levels, rent control, rent subsidies, issues of security of tenure and prevention of undue speculation;
- (5) Failing to incorporate and implement accepted international minimum standards of achievement concerning housing rights;
- (6) Failing to provide infrastructure, basic services (water, electricity, drainage, sewage, etc);
- (7) Failing to prohibit or prevent individual or civil actions amounting to housing rights violations by any person capable of committing such acts;
- (8) Failing to utilize all available resources for the fulfilment of this right;
- (9) Failing to integrate and full consider the implications for housing rights when developing macro-economic policies impacting upon the housing or related social spheres; and
- (10) Failing to submit reports as required under articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights, as well as under other treaties.

Source: UN Doc. E/CN.4/Sub.2/1993/15, paragraph 145.

human rights. In other words, housing rights, and indeed economic, social and cultural rights generally, can be violated just as civil and political rights can similarly be violated. The above examples also indicate that violations of housing rights standards can occur through the legislative process itself. Through the identification of those acts and omissions which infringe upon human rights standards, and articulating the measures required to prevent such infringements, the importance of judicial and other remedies to rectify such distortions is clearly highlighted.

Furthermore, the obligation to guarantee the right to adequate housing without discrimination, as stated above, is of immediate effect and clearly justiciable, as evident by the practices of many legal systems world-wide. Regardless of the general state of a country’s housing, it is a violation of international law – as well as national law in those States which have incorporated international human rights norms into their domestic legislation – to guarantee housing rights on a discriminatory basis. Article 2 of the ICESCR guarantees the rights embodied in the Covenant without discrimination on account of –

Box 25. Concerns raised by the Committee on Economic, Social and Cultural Rights regarding discriminatory practices in Algeria.

14. The Committee is deeply concerned about the persisting discrimination in the political, social and economic spheres of life against women in Algerian society, and women's inferior position under the Family Code of the State party, already referred to in its concluding observations on the initial report of Algeria. In this regard, the Committee expresses its serious concern about the considerable divergence existing in the State Party between constitutional provisions, on the one hand, and national legislation and practice, on the other, particularly with regard to a number of discriminatory provisions of the Family Code, including provisions on . . . gender discrimination with regard to inheritance, as well as the husband's absolute right to keep the conjugal home in the case of divorce.

29. The Committee urges the State Party to undertake a radical reform of the Family Code in order to give full recognition to the equal rights of women, to conduct an information campaign on gender equality and to introduce gender mainstreaming into all its legislation in accordance with the provisions of the Covenant.

Source: UN Doc.E/C.12/1/Add.71.

“race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Although discrimination on any of these grounds constitutes a violation of these rights, discrimination in law and in practice often disproportionately affects women. Several States still retain legal or customary systems that do not recognise or protect a woman's right to adequate housing, particularly regarding laws or customs dealing with either, or both, home ownership and inheritance. For example, and as illustrated in box 25, the Committee on Economic, Social and Cultural Rights has recently (2001) expressed deep concern about discriminatory provisions in the Family Code in Algeria with regard to inheritance, as well as the husband's absolute right to keep the conjugal home in case of divorce.

For States Parties to the Covenant, the obligation to amend such laws so as to eliminate any discriminatory impact is immediate and a failure to do so constitutes a human rights violation. The ICESCR recognises that types of discrimination against women are often unique, and therefore includes, in Article 3, a clause requiring affirmative or positive action specifically applicable to women, which obligated States to –

“ensure the equal right of men and women to the enjoyment of all economic, social and cultural right set forth in the [ICESCR].”

Article 3 of the ICCPR contains a similar clause with respect to women's equal enjoyment of their civil and political rights.

Domestic violence also disproportionately affects women's enjoyment of housing rights. For example, it challenges security of tenure in a number of ways. In some countries, as a result of gender-biased laws, customs, traditions or social attitudes, women cannot own, rent, lease or inherit housing, land or property independently from a man. For a woman-victim of domestic violence, these barriers often foreclose the option of escaping the violent environment and resettling elsewhere. Access to even temporary or emergency relief may be difficult, as shelters for women fleeing abusive relationships are uncommon in some developing countries. In some wealthier countries, budget reductions to social services have resulted in a decrease both in the number of shelters and in the number of spaces available in shelters.⁸

Finally, even in those countries where law and custom permit women to own housing, land or other forms of property, they are often prevented from doing so for a variety of economic reasons. This situation is not simply a result of women's overwhelming poverty. It is also due to gender-biased policies regarding employment opportunities and financing for housing. Thus, the standards embodied in international human rights law – particularly those prohibiting discrimination between women and men and ensuring women equal treatment – must be used as the minimum foundation for the protection of women's rights to housing, land and property in national legislation.

In 2000, the Commission Special Rapporteur also noted the gender dimension of housing rights and housing rights violations. He stressed that –
*“access to and control over land, property and housing are determinative of women's overall living conditions and are necessary to the development of sustainable human settlements in the world today. These entitlements are essential for women's economic and physical security and to the struggle for equality in gender relations.”*⁹

The Maastricht Guidelines also recognise that unique forms of discrimination often affect women. It notes that the Convention on the Elimination of All Forms of Discrimination against Women provides additional non-discriminatory protection to women with respect to economic and social rights.¹⁰ Guideline 12 states:

8. For more information regarding domestic violence and women's housing, land and property rights, see COHRE, 2000b.

9. UN Doc. E/CN.4/2001/51, paragraph 66.

10. Article 3 of the Convention on the Elimination of All Forms of Discrimination against Women states:

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full

Discrimination against women in relation to the rights recognized in the [ICESCR] is understood in light of the standard of equality for women under the Convention of 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.

Also, with respect to the housing, land and property rights of women, the Commission on Human Rights has repeatedly affirmed that –

“discrimination in law against women with respect to having access to, acquiring and securing land, property and housing, as well as financing for land, property and housing, constitutes a violation of women’s human right to protection against discrimination.”¹¹

The Commission therefore urged –

“Governments to comply fully with their international and regional obligations and commitments concerning land tenure and the equal rights of women to own property and to an adequate standard of living, including adequate housing” ... [and to] design and revise laws to ensure that women are accorded full and equal rights to own land and other property, and the right to adequate housing, including through the right to inheritance, and to undertake administrative reforms and other necessary measures to give women the same right as men to credit, capital, appropriate technologies, access to markets and information.”¹²

Similarly, the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities has reaffirmed that –

“the discrimination faced by women with respect to acquiring and securing land, property and housing, as well as financing for land, property and housing, constitutes a violation of women’s human rights to equality, protection against discrimination and to the equal enjoyment of the right to an adequate standard of living, including adequate housing.”¹³

development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

11. UN Docs. E/CN.4/RES/2001/34.

12. UN Docs. E/CN.4/RES/2001/34; and E/CN.4/RES/ 2000/13 (paragraphs 4 and 5 in both documents).

13. UN Doc. E/CN.4/Sub.2/RES/1998/15.

Additionally, the Sub-Commission has stated that it is –

“Recognizing that women face particular constraints in securing and maintaining their right to housing because of the continued existence of gender-biased laws, policies, customs and traditions which exclude women from acquiring land, security of tenure and inheritance rights to land and property ... and that these constraints are particularly acute for women who also face discrimination on one or more other grounds, including race, ethnicity, creed, disability, age, socio-economic status and marital status” [and]

“Stressing that the violation of women’s right to adequate housing results in the violation of other civil, cultural, economic, political and social rights such as the right to equality before the law and equal protection of the law, the right to life, the right to security of the person, the right to work, the right to health and the right to education.”¹⁴

To reiterate, discrimination, including the discrimination faced by billions of women around the world, constitutes a violation of human rights, including housing, land or property rights when that discrimination negatively and disproportionately affects the enjoyment of such rights. Because the principles of non-discrimination and equality in rights are not subject to the ‘progressive realisation’ or ‘availability of resources’ clauses, the existence of such discrimination places States in violation of their human rights obligations.

V.C. Judicial and other remedies for housing rights violations

As mentioned above, some still argue that housing rights, like other economic, social and cultural rights, are not justiciable. Such opinions, however, diverge significantly from local and national experiences as well as from international statements and principles relating to the justiciability of the right to adequate housing. Judicial remedies can be made available to challenge many housing rights violations. For example, equitable remedies such as injunctive orders are available to victims of discriminatory practices with respect to housing. Injunctive orders are also available to persons facing forced evictions while legal remedies, such as compensatory damages, are available for victims of past violations, including those who have suffered forced eviction.

Similarly, the progressive realisation components of the right to adequate housing lend themselves to judicial and quasi-judicial enforcement. Housing indicators and incremental benchmarks can be established/used to measure

14. UN Doc. E/CN.4/Sub.2/RES/1997/19.

Box 26. Elements of the right to adequate housing which are inherently justiciable

- (a) protection against arbitrary, unreasonable, punitive or unlawful forced evictions and/or demolitions;
- (b) security of tenure;
- (c) non-discrimination and equality of access in housing;
- (d) housing affordability and accessibility;
- (e) tenants' rights;
- (f) the right to equality and equal protection and benefit of the law;
- (g) equality of access to land, basic civic services, building materials and amenities;
- (h) equitable access to credit, subsidies and financing on reasonable terms for disadvantaged groups;
- (i) the right to special measures to ensure adequate housing for households with special needs or lacking necessary resources;
- (j) the right to the provision of appropriate emergency housing to the poorest sections of society;
- (k) the right to participation in all aspects of the housing sphere; and
- (l) the right to a clean environment and safe and secure habitable housing.

Source: UN Doc. E/CN.4/Sub.2/1995/12, paragraph 95.

whether or not a State is meeting its obligation to progressively improve housing conditions. Such measurements can be utilised in quasi-judicial fora such as the United Nations Committee on Economic, Social and Cultural Rights and regional bodies such as the European Court of Human Rights (European Court). Indeed, most components of the right to adequate housing can be judicially or quasi-judicially enforced. As mentioned above, the UNHRP is in the process of identifying such indicators and developing a composite index that will assist judicial tribunals, quasi-judicial fora, governments and housing rights advocates to quantifiably assess the current status of housing rights as well as the progressive realisation of those rights over time.

The Special Rapporteur of the Sub-Commission also supported the now well-established notion that housing rights are justiciable. He has identified a number of elements of the right to adequate housing which are inherently justiciable, whether in national, regional or international settings (see box 26). Similar sentiments are articulated in General Comment No. 4. In unequivocal terms, it states in paragraph 17 that:

“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”*

The prohibition against forced eviction illustrates how housing rights can be violated by State action as well as by inaction. General Comment No. 7 offers a clear example. It unequivocally states that the practice of forced eviction is a *prima facie* violation of the right to adequate housing and provides a clear definition, using distinct and concrete elements, of what constitutes a ‘forced eviction’. The elements constituting a forced eviction lend themselves to judicial enforcement including both equitable and legal remedies.

The Limburg Principles give further strength to the argument supporting the necessity of providing judicial remedies –

“States parties shall provide for effective remedies including, where appropriate, judicial remedies” (Principle 19).

The Maastricht Guidelines reiterate this principle, stating that –

“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 the national and international levels.” (Guideline 22).

Furthermore, the Maastricht Guidelines recognise the importance of incorporating rights embodied in international treaties into domestic legislation, stating that –

“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.” (Guideline 26).

These points of view, combined with other international legal principles on the justiciability of rights and the practice of domestic judicial systems provide convincing evidence of the obligation of States to ensure access to effective legal and other remedies in the event of violations of international and national housing rights standards.

V.D. International adjudication of housing rights violations

For persons bringing claims of housing rights violations to national judicial bodies, it is important to recognise that there are also international and regional mechanisms in which such claims can be pursued. For example, the Committee on Economic, Social and Cultural Rights has procedures which allow NGOs to submit parallel, or shadow, reports that will be considered by the Committee in conjunction with its consideration of a State Party's periodic report.¹⁵ Furthermore, the procedures allow representatives of NGOs to make oral interventions with respect to such periodic reports and NGO representatives can personally lobby Committee members. Importantly, the procedures also allow NGOs to submit written information during the Committee's pre-sessional working groups.

Box 27. The case of the Dominican Republic (1): Initial reaction by the Committee on Economic, Social and Cultural Rights (December 1990)

234. Members also referred to information to the effect that 15,000 families had been expelled from their dwellings in the context of programmes intended to remodel urban housing estates in connection with the ceremonies to mark the 500th anniversary of the landing by Christopher Columbus. These expulsions had been ordered without respect for the relevant legal procedures and the families were living in extremely difficult economic and social conditions. Consequently, explanations were requested about the Dominican Government's respect for the rights contained in article 11 of the Covenant.

249. ...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.

250. The Committee consequently requested an additional report on those issues which called for more detailed development as well as answers to those questions which had been kept pending.

Source: UN Doc. E/C/12/1990/8.

15. See UN Doc. E/C.12/2000/6. Concerning State Parties' reporting requirements see sub-chapter III.B.

Box 28. The case of the Dominican Republic (2): Written statement submitted by Habitat International Coalition (3 December 1991)

7. In view of the deep concern expressed by the Committee at its fifth session in relation to past evictions and taking account of the fact that the Committee specifically requested the Government to provide it with further information, which it so far failed to do, it is essential for the Committee to reinforce its earlier expressions of concern. It should therefore call upon the State Party, as a matter of urgency, to provide it with a detailed response to the allegations that have already been made as well as to those which are alluded to in the information below. It is submitted that, in the absence of such action by the Committee, the credibility of the Committee's supervisory procedures would be entirely undermined.

8. A dossier of detailed information about this recent decree and the evictions which includes analyses, photographs and a copy of the decree itself has been provided to the Secretariat and is available for consultation by members of the Committee. Since the largest part of the eviction has not yet been carried out, the Committee can play a preventive and constructive role in officially addressing this intended large-scale violation of housing rights in a State Party which appeared before the Committee only one year ago.

9. An official request for information sent urgently by the Committee directly to the President of the Dominican Republic expressing its concern at decree 358-91, and requesting that no further evictions are carried out, could encourage the Government to reconsider its current plans.

Source: UN Doc. E/C.12/1991/NGO/1.

The purpose of the working groups is to identify in advance the questions that will constitute the principal focus of the dialogue with the representatives of the reporting States. NGOs can provide written or oral information to the working group as long as it relates to matters on the agenda of the working group, such as consideration of upcoming periodic reports. By directing the attention of the Committee to issues of concern at such an early stage, NGOs can help focus both the Committee and the Government in question on those issues. Then, at the review of the periodic report itself, NGOs can help to ensure that the Committee does indeed carry through with its focus on those issues.

Through the strategic use of such procedures, international judicial and quasi-judicial systems have at times effectively declared remedies with respect to the practice of forced evictions. For instance, in the early 1990s, action taken by the Committee on Economic, Social and Cultural Rights resulted in a *de facto* injunction against the Government of the Dominican Republic, declaring that the Government –

Box 29. The case of the Dominican Republic (3): Report of the Committee on Economic, Social And Cultural Rights (6 December 1991)

330. The Committee notes that its request for additional report on those issues has not evoked a response from the Government. It notes that in the meantime it has received additional information from several sources, including that contained in E/C.12/1991/NGO/1, which, if accurate, would give rise to serious concern on the part of the Committee. The Committee thus requests the State Party to suspend any actions which are not clearly in conformity with the provisions of the Covenant, and requests the Government to provide additional information to it as a matter of urgency.

The Committee requests the Secretary-General of the United Nations to inform the Government of the Dominican Republic of the Committee's decision as soon as possible.

Source: UN Doc. E/C.12/1991/4.

“suspend any actions which are not clearly in conformity with the provisions of the Covenant, and request[ing] the Government to provide additional information to it as a matter of urgency” (see box 30).

Based at least in part on this statement, backed up by facts gathered by local CBOs and NGOs both within and outside the country, the Government of the Dominican Republic halted the pending forced eviction of some 70,000 persons. This case illustrates not only how quasi-judicial bodies can effectively deal with violations of the right to adequate housing, but also how NGOs play a valuable role in monitoring and enforcing the realisation of such rights.

In 1990, NGOs – including in particular Habitat International Coalition – investigated reports from grass-roots organisations that the Government of the Dominican Republic had begun to carry out large-scale forced evictions in and around Santo Domingo. As part of their advocacy strategy, these NGOs brought this matter to the attention of the United Nations Committee on Economic, Social and Cultural Rights during the Committee's consideration of the initial periodic report from the Dominican Republic. Acting upon that information, the Committee found the allegations to be credible and requested further information from the Government (see box 27).¹⁶

In 1991, the NGO community continued to access United Nations mechanisms as means of pressing the Government of the Dominican Republic to cease and desist all forced evictions. In a written statement to the Committee

16. A more extended compilation of extracts from the Dominican Republic case is available in UN-HABITAT, 2002a.

Box 30. The case of the Dominican Republic (4): The Committee on Economic, Social and Cultural Rights' concluding observations on the reports submitted by the Dominican Republic pursuant to the 6 December 1991 request

1. On 30 November 1994, at its 43rd meeting, the Committee examined matters arising out of the requests to the Government of the Dominican Republic for the provision of additional information, in particular relating to the right to adequate housing.

8. The Committee reiterates the importance it attaches to the right to housing and reaffirms its long-standing view that forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in truly exceptional circumstances. The situation regarding forced evictions within the country continues to be viewed with concern by the Committee.

9. The Committee has received, over the course of several years, detailed and precise information relating to the housing situation in the Dominican Republic. This information has systematically been provided to the Government with a request for comments as to its accuracy.

10. While the Government presented the Committee with information as to the achievements and shortcomings of its various policies in relation to housing, the Committee did not receive any information which would lead it to conclude that these problems do not exist or have been adequately addressed.

11. It therefore expresses its serious concern at the nature and magnitude of the problems relating to forced evictions and calls upon the Government of the Dominican Republic to take urgent measures to promote full respect for the right to adequate housing. In this regard, the Committee notes that whenever an inhabited dwelling is either demolished or its inhabitants evicted, the Government is under an obligation to ensure that adequate alternative housing is provided. In this context "adequacy" requires relocation within a reasonable distance from the original site, and in a setting which has access to essential services such as water, electricity, drainage and garbage removal. Similarly, persons who are housed in conditions which threaten their life and health should, to the maximum of available resources, be adequately re-housed.

Source: UN Doc. E/C.12/1994/15.

on Economic, Social and Cultural Rights, Habitat International Coalition urged the Committee to urgently –

- reiterate its call to the Government of the Dominican Republic to respond to the concerns regarding past and pending forced evictions and
- send such a request directly to the President of the Dominican Republic (see box 28).

Responding to the advocacy of Habitat International Coalition, the Committee did indeed reiterate its request for additional information regarding forced evictions in and around Santo Domingo. Furthermore, because the Committee did not receive a response from the Government, it was able to

Box 31. The case of the Dominican Republic (5): The Committee on Economic, Social and Cultural Rights' concluding observations to the second periodic report of the Dominican Republic

6. The Committee notes with satisfaction, from the information available to it from other sources, that the Government has repealed Decree No. 358-91, the application of which had previously negatively affected the realization of the right to adequate housing, and that it has provided a solution to the cases of eviction pronounced under previous governments.

Source: UN Doc. E/C.12/1/Add.6.

presume the allegations of the NGO community to be factual and therefore requested that the Government

“suspend any actions which are not clearly in conformity with the provisions of the Covenant.” (see box 29).

In 1994, the Committee considered additional information received from the Government of the Dominican Republic. In doing so, the Committee noted that the additional information failed to address with specificity the concerns articulated by the Committee over the past few years regarding forced evictions. The Committee referred to ‘detailed and precise’ information it has received from NGOs regarding the situation in the Dominican Republic – including information regarding a decree ordering forced evictions, and issued at around the same time the Government was replying to the Committee (see box 30). The Committee, drawing the Government’s attention to its housing rights obligations as expressed in General Comment No. 4, stated that the Government

“should confer security of tenure on all dwellers lacking such protection at present, with particular reference to areas threatened with forced eviction”

and pointed out specific legislation that contravened the Covenant. The Committee then requested that the Government invite Committee members to carry out an *in situ* visit the country to investigate the housing rights first hand. The *in situ* visit, the first ever such visit carried out by a United Nations treaty-monitoring body, was carried out in 1995 and confirmed the reports the Committee had been receiving from civil society. Upon receiving the views of the Committee, the Government halted the pending evictions.

Due in part to the diligent work of the NGO community and the mechanisms made available pursuant to procedures of the Committee on Economic, Social and Cultural Rights, the decree mandating forced evictions in the Dominican Republic was ultimately repealed, the forced eviction of some fifteen thousand persons was halted and remedies were made available to

victims of past forced evictions. This change was recognised by the Committee during its review of the second periodic report of the Dominican Republic (see box 31).

The case of the Dominican Republic illustrates how NGOs, using innovative means of accessing the United Nations human rights monitoring systems, can achieve concrete results. Armed with detailed and precise factual information, NGOs and other advocates can shift the burden to governments to justify either their actions, or inaction, or to stand in the light of the international community as violators of human rights.

The Committee on Economic, Social and Cultural Rights has not been alone in building a housing rights jurisprudence at the international level. The United Nations Committee on the Elimination of Racial Discrimination, for instance, decided in the case of *L.K. v. The Netherlands*¹⁷ that the complaint alleging non-compliance by the State party of Article 5(e)(iii) of the International Convention on Racial Discrimination – non-discrimination in terms of the right to adequate housing – was valid. Among other grounds, the applicant alleged his right to housing in an environment free of racial discrimination, as enshrined in Article 5(e)(iii), had been violated due to hostile reactions by neighbours to a prospective tenant in an Utrecht neighbourhood, who was of non-Dutch origin.

The lessons learned from the above cases illustrate how international judicial and quasi-judicial mechanisms could be effectively utilised by civil society to protect and enforce housing rights. Indeed, the above examples should encourage civil society to press housing rights issues before not only the Committee on Economic, Social and Cultural Rights, but other relevant treaty-monitoring bodies such as the Committee on the Elimination of Racial Discrimination and the Human Rights Committee,¹⁸ with respect to both States Parties reports and individual complaint procedures. With respect to the Human Rights Committee and the enforcement of housing rights within the civil and political rights regime, lessons from the regional adjudication mechanisms prove extremely useful.

17. *L.K. v. The Netherlands*, Comm. No. 4/1991, opin. 16 March 1993, 42nd session.

18. Which monitors implementation of and compliance with the International Convention on Racial Discrimination and the ICCPR respectively.

V.E. Regional adjudication of housing rights violations

In addition to the international human rights system, regional systems exist under various regional organisations such as the Organisation for African Unity (OAU), the Organisation of American States (OAS) and the Council of Europe.

V.E.1. Europe

The European system provides an illustration of how housing rights can be protected at the regional level. The revised European Social Charter, in Article 31, states:

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

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

The revised European Social Charter thereby provides the greatest guarantee of housing rights to be found in a regional instrument. The Charter is monitored by the Committee of Independent Experts, also known as the Social Rights Committee. The second significant instrument is the [European] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), which is administered by the Council of Europe. The European Commission of Human Rights (European Commission) and the European Court was established under the European Convention to receive complaints alleging violations of the European Convention and its Protocols. The European Commission is a non-adjudicative body that can be requested to give an opinion regarding rights found in the European Convention. The European Court is a regional human rights body that has adjudicated numerous claims involving housing rights, although an explicit ‘right to housing’ does not exist in the European Convention. As the following cases illustrate, in making its decisions on housing rights issues, the Court has consistently held that in

Box 32. [European] Convention for the Protection of Human Rights and Fundamental Freedoms (Article 8)

1. Everyone has the right to respect for his [or her] private and family life, his [or her] home and his [or her] correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Box 33. [First] Protocol to the [European] Convention for the Protection of Human Rights and Fundamental Freedoms (Article 1)

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

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.

certain circumstances State interference with a person's home violates Article 8 of the European Convention (see box 32). Likewise, the Court has held that forced evictions, arbitrary expropriations and expropriations without compensation all violate Article 1 of Protocol 1 to the European Convention (see box 33).

Many of the 'Article 8 and Protocol 1 cases' arose out of armed conflicts within a member State of the Council of Europe. Other cases arose out of arbitrary government expropriations or expropriations in the public interest without payment of adequate compensation. In many cases, the Court has awarded compensation pursuant to Article 50 of the European Convention.¹⁹

Since Article 8 is usually categorised as a civil right, and indeed nearly mirrors the language of Article 17 of the ICCPR, such interpretations are particularly important when dealing with legal regimes that don't provide adequate recognition or protection of economic, social and cultural rights. Similarly, such interpretations are important when dealing with States that are party to the ICCPR but not the ICESCR. The jurisprudence and legal argument regarding Article 1 of Protocol 1 to the European Convention are equally significant.

As such, Article 8 and Article 1 of Protocol 1 jurisprudence from the European Court provide housing rights advocates with legal arguments that can be used within legal regimes that protect civil rights to a greater extent than economic and social rights. Furthermore, Article 8 and Article 1 of Protocol 1 arguments that have been successfully used before the European Commission and the European Court may prove equally successful before the United Nations Human Rights Committee. Hence, advocates can use the jurisprudence and arguments from the following cases both within the context of contributing to the consideration of periodic reports submitted to the Human Rights

19. More comprehensive texts of several particularly relevant judgements made by the European Court on Human Rights can be found in UNHABITAT, 2002a.

Committee by States Parties to the ICCPR, as well as adjudicated through the individual communication mechanism with respect to States Parties to the [First] Optional Protocol to the ICCPR.²⁰

Several cases have dealt with forced evictions. One of these is the inter-state complaint case of *Cyprus v. Turkey* of 1976 addressed evictions as a violation of the right to ‘respect for the home,’ and thus provided significant protection against violation of internationally recognized housing rights. Notwithstanding the causes why there has been intervention from a State, the case illustrates how standards dealing with protecting persons from interference with their home have been interpreted to protect dwellers from forced evictions. The opinion of the European Commission held that:

*“The evictions of Greek Cypriots from houses, including their own homes, which are imputable to Turkey under the Convention, amount to an interference with rights guaranteed under article 8(1) of the Convention, namely the right of these persons to respect for their home, and/or their right to respect for private life The Commission concludes...that...Turkey has committed acts not in conformity with the right to respect for the home guaranteed in Article 8 of the Convention.”*²¹

The *Case of Cyprus v. Turkey* was ultimately considered by the European Court in 2001. The Court reaffirmed the finding of the European Commission, held with respect to Article 8 of the European Convention and Article 1 of Protocol 1 to the European Convention –

*“that there has been a continuing violation of Article 8 of the Convention by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus ... [and that there has been a] continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights.”*²²

In *Wiggins v. United Kingdom*, another case dealing with an individual eviction, a man who lawfully owned his ‘home’ was refused a permit to live in

20. Individual who allege they are victims of a violation of their rights under the ICCPR may submit communications alleging such violations to the United Nations Human Rights Committee pursuant to the [First] Optional Protocol to the ICCPR.

21. *Cyprus v. Turkey*, Applications 6780/74 and 6950/75, Report of the Commission, *European Human Rights Reports*, vol. 4, p. 482 (paragraphs 208-210).

22. *Case of Cyprus v. Turkey*, Eu. Ct. Hum. Rts., App. No. 00025781/94 (judgement of 10 May 2001), sections III(1) and III(4).

the house by a local Housing Authority due to a recent separation from his wife. The government submitted that the occupancy of the house in question was conditional on his being a member of his wife's household, and requested the applicant to move out of his house, although he had been living there for five years. The European Commission found that the refusal of the Housing Authority to grant the applicant a license and their order that he should vacate the premises interfered with his right to respect for his home as guaranteed by Article 8(1). However, under Article 8(2), the European Commission found that the order by the Housing Authority to the owner to vacate the premises was –

*“in accordance with the law...which pursued a legitimate aim of preventing over-population of Guernsey, which was necessary for the economic well-being of Guernsey and for the protection of the rights and freedoms of others.”*²³

Although the man's rights were interfered with, the European Commission justified the order to vacate under article 8(2), by siding with the government.

In the case of *Akdivar and others v. Turkey*, the issue of the alleged burning of houses by security forces in southeast Turkey was considered by the European Court. Applicants alleged that on 10 November 1992 State security forces launched an attack on the village of Kelekçi, burnt nine houses, including their homes, and forced the immediate evacuation of the entire village. The government categorically denied these allegations, contending that the houses had been set on fire by the PKK.²⁴ The Court held that with respect to Article 8 of the European Convention and Article 1 of Protocol 1 to the European Convention:

“The Court is of the opinion that there can be no doubt that the deliberate burning of the applicants' homes and their contents constitutes at the same time a serious interference with the right to respect for their family lives and homes and with the peaceful enjoyment of possessions. No justification for these interferences having been proffered by the respondent Government - which confined their response to denying involvement of the security forces in the incident -, the Court must conclude that there has been a violation of both Article 8 of the Convention and Article 1 of Protocol No. 1. It does not consider that the evidence

23. *Case of Wiggins v. United Kingdom*, Report of the Commission, *European Human Rights Reports*.

24. Kurdistan Worker's Party.

*established by the Commission enables it to reach any conclusion concerning the allegation of the existence of an administrative practice in breach of these provisions.”*²⁵

The 1989 case of *Mellacher and others v. Austria* dealt with the application of Article 1 of Protocol 1 to the European Convention on the ‘peaceful enjoyment of possessions’ in the context of rent control measures. The applicant landlord argued that his rights under Protocol 1 were infringed due to the imposition of rent control measures on property he owned. However, the Court viewed the matter differently and made the following main findings in their judgement, which are significant in housing rights terms, particularly regarding the rights of tenants:

“(a) the disputed reductions [in rent] were neither a formal nor de facto expropriation but amounted to a control of the use of the property;

b) the legislature has wide discretion with regard to the implementation of social and economic policies, in particular in the field of housing;

c) the justifications given by the State for the legislation in question cannot be regarded as manifestly unreasonable. They represent the pursuit of a legitimate aim in the general interest;

d) in remedial social legislation and in particular in the field of rent control, it must be open to the legislature to take measures affecting the further execution of previously concluded contracts; and

*e) the measures adopted to control rents did not fall outside the state’s margin of appreciation, and although the rent reductions were striking in their amount they did not constitute a disproportionate burden.”*²⁶

In 1992, the Court considered *Papamichalopoulos and others v. Greece*.²⁷ The case concerned the occupation by the Greek Navy since 1967 of land belonging to the applicants, which they were unable to recover in spite of recognition by the courts of their ownership. No compensation has been paid and no suitable land has been found to give them in exchange. The applicants alleged a violation of Article 1 of Protocol 1 to the European Convention in

25. *Case of Akdivar v. Turkey*, Eu. Ct. Hum. Rts., Reports 1996-IV (judgement of 16 September 1996), paragraph 88.

26. *Case of Mellacher and others v. Austria*, Eu. Ct. Hum. Rts., Series A, No. 169 (judgement of 19 December 1989).

27. *Case of Papamichalopoulos and others v. Greece*, Eu. Ct. Hum. Rts., A260-B (judgment of 24 June 1993).

that their properties had been occupied since 1967 without compensation of any kind. The European Commission concluded unanimously that there had been a violation of Article 1 of Protocol 1 to the European Convention.

In the case of *Spadea and Scalabrino v. Italy*,²⁸ the European Commission opined that the failure of the public authorities to evict elderly tenants from the homes owned by the applicants was not a violation of the right to peaceful enjoyment of possessions; in effect protecting the rights of the tenants to remain in the accommodation.²⁹

In *Z. and E. v. Austria*, the European Commission observed with regard to Article 1 of Protocol 1 to the European Convention, *inter alia*, that:

*“[I]n so far as the applicants claim that there has been an unjustified interference with their property rights as guaranteed by Article 1 of the Protocol, the Commission first notes that both parties seem to agree that there was no deprivation of possessions within the meaning of the second sentence of paragraph 1 of this Article. A restriction on the landlord's right to give notice to his tenant must in fact be considered as a regulation of the use of property within the meaning of the second paragraph of Article 1. This has been confirmed by the Commission's decision on the admissibility of application No. 8003/77, X. v. Austria (Dec.3.10.79, D.R.17, p. 80) which concerned the same legislation as that applied in the present case. In that decision, the Commission also found that the restrictions in question pursued a legitimate social policy, i.e. the protection of the interests of tenants in a situation of a shortage of (cheap) housing, and that they were as such appropriate means to achieve this aim of social policy so that they could still be considered as necessary to control the use of property in accordance with the general interest.”*³⁰

In the case of *James and Others v. the United Kingdom* housing rights matters were also raised by the European Court in the context of the right to peaceful enjoyment of one's possessions. The Court held that:

28. *Case of Spadea and Scalabrino v. Italy*, Eu. Ct. Hum. Rts., A315-B (judgment of 28 September 1995).

29. For a brief description of this case, see *Netherlands Quarterly of Human Rights*, vol. 12, no. 4, pp. 452-453 (1994).

30. *Case of Z. and E. v. Austria*, App. No. 10153/82, (as listed in 1986, vol. 29 *Yearbook of the European Convention on Human Rights*).

*“[M]odern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to the play of market forces. The margin of appreciation is wide enough to cover legislation aimed at securing greater social justice in the sphere of peoples homes, even where such legislation interferes with existing contractual relations between private parties and confers no direct benefit on the State or the community at large. In principle, therefore, the aim pursued by the leasehold reform legislation is a legitimate one.”*³¹

As such, legislation aimed at securing greater social justice in the sphere of people’s homes was justified, even when it –

*“interferes with existing contractual relations between private parties and confers no direct benefit on the State or the community at large.”*³²

In *Phocas v. France*,³³ the Court held that there had been no violation of Article 1 of Protocol 1 to the European Convention in the case where the applicant's full enjoyment of his property had been subjected to various interferences due to the implementation of urban development schemes, since the said interference complied with the requirements of the general interest. The Court also found that there had been no violation of Article 6 (1) of the European Convention.

In *Zubani v. Italy*,³⁴ a case concerning expropriation, the Court held that there had been a violation of Article 1 of Protocol 1 to the European Convention as no fair balance had been struck between the interest of protecting the right to property and the demands of the general interest, as a result of:

- the length of the proceedings;
- the difficulties encountered by the applicants to obtain full payment of the compensation awarded; and
- the deterioration of the plots eventually returned to them.

V.E.2. The Americas

Although other regional systems have not explicitly protected housing rights to the same extent as the European system, and thus do not have the same depth

31. *Case of James and Others v. United Kingdom*, Eu. Ct. Hum. Rts., series A, vol. 98 (judgement of 21 February 1986), paragraph 47.

32. *Ibid.*

33. *Case of Phocas v. France*, Eu. Ct. Hum. Rts., Reports 1996-II (judgement of 23 April 1996).

34. *Case of Zubani v. Italy*, Eu. Ct. Hum. Rts., Reports 1996-IV (judgement of 7 August 1996).

of jurisprudence, there are limited exceptions. The Inter-American Commission on Human Rights (Inter-American Commission) and the Inter-American Court on Human Rights (Inter-American Court) have had the opportunity to consider cases that address the right to property, although to date neither has dealt directly with housing rights. For instance, the Inter-American Commission stated in *Carlos Garcia Saccone v. Argentina*, that –

*“in the inter-American system, the right to property is a personal right. The Commission is empowered to vindicate the rights of an individual whose property is confiscated”*³⁵

Box 34. American Declaration on the Rights and Duties of Man

Article I.

Every human being has the right to life, liberty and the security of his [*or her*] person.

Article II.

All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

Article V.

Every person has the right to the protection of the law against abusive attacks upon his [*or her*] honor, his [*or her*] reputation, and his [*or her*] private and family life.

Article VIII.

Every person has the right to fix his [*or her*] residence within the territory of the state of which he [*or she*] is a national, to move about freely within such territory, and not to leave it except by his [*or her*] own will.

Article IX.

Every person has the right to the inviolability of his [*or her*] home.

Article XI.

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

Article XVIII.

Every person may resort to the courts to ensure respect for his [*or her*] legal rights. There should likewise be available to him [*or her*] a simple, brief procedure whereby the courts will protect him [*or her*] from acts of authority that, to his [*or her*] prejudice, violate any fundamental constitutional rights.

Article XXIII.

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

35. *Carlos Garcia Saccone v. Argentina*, (Case 11.671, Report N° 8/98, Inter-Am. C. H. R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 193 (1997).

Both the Inter-American Commission and the Inter-American Court apply the substantive law contained in the American Declaration on the Rights and Duties of Man (American Declaration)³⁶ as well as in the American Convention on Human Rights (American Convention), depending on the ratification status of the OAS member State in question. The American Declaration has some limited protections with respect to housing, and other regarding property more generally, including land (the most applicable Articles are presented in box 34). The American Convention, meanwhile, contains provisions guaranteeing certain property rights, which, again, have been interpreted to include land (see box 35). Unfortunately, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) does not include housing rights provisions, but Article 22 of the Protocol of San Salvador explicitly allows for the inclusion of other rights via amendment.

When working on a case with regard to a violation committed by a particular country, however, it is always important to bear in mind any reservations that a country might have with respect to the treaty. Additionally, it is important to bear in mind whether the State in question has recognised the competency of the Inter-American Court.³⁷

The Inter-American Commission has considered a number of cases that touch upon housing, land and property rights. It has often read the relevant Articles from the American Declaration and American Convention (presented in box 34 and box 35 respectively) to not only protect general property rights, but the findings of the Inter-American Commission can be argued to protect housing rights as well.

For instance, in *Comadres*,³⁸ petitioners alleged violations committed by the Salvadoran State of, *inter alia*, the right to privacy (Article 11) and the right to property (Article 21). Petitioners stated that in July 1980, a bomb damaged windows and doors of the COMADRES³⁹ headquarters, and that on 12 June 1985, Government security forces entered the COMADRES headquarters and removed selected information on human rights violation cases, including photographs and names of persons connected with those cases. The Commission found that as to the entry into and the pillaging of the

36. Note that unlike most declarations, the American Declaration is legally binding on all members of the OAS pursuant to an amendment to the Charter of the OAS.

37. For a list of country reservations to the American Convention, see: <<http://www.cidh.oas.org/Basicos/basic4.htm>>.

38. *Comadres*, Case 10.948, Report No. 13/96, Inter-Am. Ct. Hum. Rts., OEA/Ser.L/V/II.91Doc. 7 at 101 (1996).

39. A human rights NGO in El Salvador.

Box 35. American Convention on Human Rights

Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, “person” means every human being.

Article 11. Right to Privacy

1. Everyone has the right to have his *[or her]* honor respected and his *[or her]* dignity recognized.

2. No one may be the object of arbitrary or abusive interference with his *[or her]* life, his *[or her]* family, his *[or her]* home, or his *[or her]* correspondence, or of unlawful attacks on his *[or her]* honor or reputation.

3. Everyone has the right to the protection of the law against such interference or attacks.

Article 21. Right to Property

1. Everyone has the right to the use and enjoyment of his *[or her]* property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his *[or her]* property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 26. Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

COMADRES offices on 12 June 1985, the Inter-American Commission presumed those facts to be true and found that there was a violation of the right to property (Article 21) and the right to be free from arbitrary and abusive interference (Article 11). Although the property dealt with in Comadres was office space, the case clearly indicates that similar arguments with respect to Articles 11 and 21 (of the American Convention) could apply to housing.

In the case of *Leon Thebaud*,⁴⁰ the Inter-American Commission considered similar circumstances, but this time the property invaded and ransacked was the petitioners house. The Commission found that the respondent state, Haiti, violated, *inter alia*, Article 21 of the American Convention.

With respect to land rights, the Inter-American Commission in 2000 considered the case of *Maya Indigenous Communities and Their Members*.⁴¹ This case involved the confiscation of lands belonging to the Mopan and Ke'ekchi Maya people by Belize. The petitioner claimed that the Belize State violated the rights of the Toledo Maya indigenous communities in relation to their lands and natural resources, and that the State granted numerous concessions for logging and oil development to developers on a total of over half a million acres of land that are traditionally used and occupied by the Maya communities in the Toledo District. The Inter-American Commission recognized violations of, *inter alia*, Articles I, II, XI, XVIII and XXIII of the American Declaration.

It also deserves mention that, in carrying out its own investigations, the Inter-American Commission has found that military repression has prompted large-scale internal displacement in a number of countries, and in many cases this displacement has directly affected the right to adequate housing. For example, a 1994 report on the human rights situation in Guatemala called upon the Government of Guatemala to cease military harassment of displaced persons within the country and to extend them legal recognition.⁴² Specifically, the Inter-American Commission recommended to the Government of Guatemala that it, “[o]ffer to pay compensation for any future damage to property and crops caused by armed clashes,” and further recommended the “[c]reation of an effective mechanism for damage assessment and immediate payment.” In this regard, the Inter-American Commission recommended that the Government of Guatemala provide for the “[a]ppointment of an Auditor to assess past damage to villagers caused by security operations.”⁴³

Guatemala is not the only country that in the past has received this kind of attention from the Inter-American Commission. For example, a report on the forcible displacement of the Miskito Indians in Nicaragua made the far-

40. *Leon Thebaud*, Case 3405, Inter-Am. C.H.R. 46, OEA/ser. L/V/II.63, doc. 10 (1983) (Annual Report 1983-1984).

41. *Maya Indigenous Communities and Their Members*, Case No. 12.053, Inter-Am. C.H.R., OEA/Ser./L/V/II.111 doc. 20 rev. (2000) (Annual Report 2000).

42. Inter-American Commission on Human Rights, 1994; see also Painter, 1996.

43. Inter-American Commission on Human Rights, 1994.

reaching recommendation that compensation be awarded to the Miskitos for damage done to their property.⁴⁴

The Inter-American Court has considered relatively few cases that relate to housing rights claims under the American Declaration or the American Convention. Yet, there is at least one important exception. The property rights of indigenous peoples were reaffirmed by the Inter-American Court in a landmark judgement on 31 August 2001, and the ruling of the Court in this case is also extremely relevant to the protection of housing rights within the Americas.

Specifically, the Mayagna (Sumo) Awas Tingni Indigenous Community of the Atlantic Coast of Nicaragua secured recognition of its rights to its ancestral lands in a case presented by the Inter-American Commission to the Inter-American Court, establishing a historical precedent at the international level, which recognizes the communal property rights of indigenous peoples. The Inter-American Commission originally found violations by the State of Nicaragua of Articles 1 (obligation to respect rights), 2 (on the duty to enact domestic legislation), 21 (on the right to private property), and 25 (on judicial protection) of the American Convention. Through this case, the Commission asked the Court to establish a legal procedure for the prompt demarcation and official recognition of the property, in this case land, of the Awas Tingni Community. Upon rendering its decision, the Court stated that –

“This situation [the lack of demarcation] has generated a persistent climate of uncertainty among the Awas Tingni Community. They do not know for sure where their communal property rights end in a geographic sense. Therefore, they do not know to what extent they can use and freely enjoy their assets.”⁴⁵

The Court, concurred with the Commissions findings and held that the members of the Awas Tingni Community are entitled to have the State delimit and issue titles to the Community’s lands, and that the State must refrain from actions that would affect lands where members of the Community live and conduct their activities.

V.F. National adjudication of housing rights violations

The use of international law, particularly with respect to economic, social and cultural rights, has yet to be sufficiently utilised at the domestic level. Such use, however, can be an effective means for individuals and groups to enforce their

44. Inter-American Commission on Human Rights, 1984.

45. *Caso de la Comunidad Mayagna (Sumo) Awas Tingni v. Nicaragua, Sentencia de 31 de agosto de 2001.*

respective international rights, whether through advocacy, including litigation, at the regional or national levels. Indeed, increasing attention by NGOs and other advocates to the development of adjudication strategies at both the national and regional level has emerged and strengthened in recent years. Few cases have, however, come to a conclusion so far. One notable exception is the situation in South Africa, which has incorporated international protections into its constitutional and legislative law. It also has an emerging group of lawyers and other advocates willing to litigate economic, social and cultural rights – including the right to adequate housing – within domestic judicial fora.

Victims of forced evictions, as well as persons facing pending forced evictions, have begun to enlist the expertise of these lawyers and other advocates and to use South Africa’s judicial system in order to enforce their housing rights. Arguably the most notable case is that of *Government of the Republic of South Africa and others v. Grootboom and others (Grootboom)*, in which the South African Constitutional Court upheld children’s housing rights provisions in the South African Constitution (see box 36). *Grootboom* shows how states can incorporate housing rights into their respective constitutions and thereby fulfilling their international human rights obligations. Moreover, it is also allowing their residents to challenge subordinate legislation, regulations and policies that do not meet the minimum standards established within South African law itself.

Box 36. *Grootboom*: National courts and the application of economic, social and cultural rights

Grootboom is a landmark decision of South Africa’s Constitutional Court, delivered in 2000, concerning the role of the State in providing “relief for people who have no access to land, no roof over their heads and who are living in intolerable conditions or crisis situations.” The case also diminished the perception of some that the highest court of the land was solely for the benefit, protection and use of the powerful.

The background to the case concerns Ms. Irene Grootboom and a group of squatters in Wallacedene who were evicted from land earmarked for low-cost housing development. In the course of the eviction, their structures were demolished and building materials destroyed.

An *amicus curiae* brief submitted by the South African Human Rights Commission and the Community Law Centre argued that the Court should follow the approach of the United Nations Committee on Economic, Social and Cultural Rights, according to which socio-economic rights are found to contain minimum core obligations, and these require the satisfaction of minimum essential components of the right to adequate housing.

(continues...)

Box 36. (continued).

The Constitutional Court ultimately made a declaratory judgement requiring the State to meet its obligations under section 26(2) of the Constitution, which protects the right of access to adequate housing “*within its available resources, [and] to achieve the progressive realisation of this right.*” The Court noted, however, that the “availability of resources” clause did obligate the State to immediately carry out “*effective implementation [which] requires at least adequate budgetary support by national government. This, in turn, requires recognition of the obligation to meet immediate needs in the nationwide housing programme. Recognition of such needs in the nationwide housing programme requires it to plan, budget and monitor the fulfilment of immediate needs and the management of crises.*” With respect to the ‘progressive realisation’ clause, the Court, using the meaning provided to the clause in the ICESCR, opined that “*the goal of the Constitution is that the basic needs of all in our society be effectively met and the requirement of progressive realisation means that the state must take steps to achieve this goal. It means that accessibility should be progressively facilitated: legal, administrative, operational and financial hurdles should be examined and, where possible, lowered over time. Housing must be made more accessible not only to a larger number of people but to a wider range of people as time progresses.*” The Court thus declared that the State’s programme to realise this right must include reasonable measures to provide relief to persons living in intolerable conditions or crisis situations.

Source: Government of the Republic of South Africa and others v. Grootboom and others, 2000 (3) BCLR (2000). For additional excerpts from this case, see UN-HABITAT, 2002a.

In *Grootboom*, the Court also made a declaratory judgement requiring the Government of South Africa to meet its obligations under Section 26(2) of the Constitution, which protects the right of access to adequate housing “*within its available resources, [and] to achieve the progressive realisation of this right.*” The Court noted that the State’s programme to realise this right must include reasonable measures to provide relief to persons living in intolerable conditions or crisis situations.

Even absent an explicit constitutional or legislative right to adequate housing, some national courts have found that right to be implicit in national constitutional or legislative frameworks. One key example is provided by the Supreme Court of India, which has interpreted the right to life, enshrined in Article 21 of the Indian Constitution, to imply a right to shelter and protection from forced eviction. In the 1978 seminal case of *Maneka Gandhi v. Union of India*,⁴⁶ the Indian Supreme Court stated that the right to life provisions in the

46. *Maneka Gandhi v. Union of India*, (1978, 1SCC 248).

Constitution must be taken to mean “*the right to live with dignity.*” In 1981, the Indian Supreme Court took its analysis one step further in *Francis Coralie v. Union Territory of Delhi*,⁴⁷ in which, building upon *Maneka Gandhi*, it stated that the right to life includes the right to live with human dignity and all that goes along with it, namely the basic necessities of life such as adequate nutrition, clothing, and shelter. Finally, in 1985, the Indian Supreme Court considered the case of *Olga Tellis v. Bombay Municipal Corporation*. In this case, the Court held that forced eviction would result in a deprivation of the ability to earn a livelihood. The Court further noted that the ability to earn a livelihood was essential to life and thus the forced evictions would result in a violation of the right to life as embodied in Article 21 of the Indian Constitution. The Court said:

*“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.”*⁴⁸

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 unauthorised possession of land or has built on it without authority, she or he cannot be evicted without authority of law. The case, which involved the demolition of eight huts in the Jagamata leprosy *ashram*, for which the DDA was ordered by the Court to give the evicted patients alternative accommodation within a two week period.⁴⁹ In *Ram Prasad v. Chairman, Bombay Port Trust*⁵⁰ the Supreme Court directed the relevant public authorities not to evict 50 slum dweller families, unless alternative sites were provided for them.

In another housing rights case in 1990, *Shanti Star Builders v. Naryan Khimalal Totame & Ors*, the same Court gave a sweeping definition to the right to life clauses of the Indian Constitution, deciding that:

47. *Francis Coralie v. Union Territory of Delhi*, (AIR 1981, S.C.R. 746).

48. *Olga Tellis v. Bombay Municipal Corporation* (1985, 3 SCC 545).

49. See, *DDA’s demolition of leper huts illegal: S.C.R.*, in *Indian Express (New Delhi edition)*, 3 July 1986.

50. *Ram Prasad v. Chairman, Bombay Port Trust* , AIR 89 S.C.R. 1306 (Decided on 29 March 1989).

*“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.”*⁵¹

In the United States, within the context of the well-known *Mt. Laurel Case* (*Mt. Laurel II*, 1983), the New Jersey Supreme Court stated that –
*“there cannot be the slightest doubt that shelter, along with food, are among the most basic human needs....It is plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare.”*⁵²

In what is seen by some analysts as one of the most successful homeless rights cases in the US, and the first to recognize a right to shelter, the 1979 case of *Callahan v. Carey*,⁵³ a class-action suit was filed on behalf of homeless men on the Lower East Side of New York City, demanding that the city provide shelter to any man who asked for it based on provision of the New York State Constitution, sections of the State’s Social Services Law and the New York Administrative Code. The New York Supreme Court granted a temporary injunction that required New York City to furnish a sufficient number of beds to meet the needs of all homeless men applying for shelter.⁵⁴ The Court thus recognised a legal right to shelter (but not housing as a human right) and set forth minimum standards for operating existing and new shelters.⁵⁵

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

52. *Southern Burlington County NAACP v. Township of Mount Laurel*, 456 A.2d 390 (N.J. 1983) (*Mount Laurel II*); See also two similar court rulings in Canada finding that local zoning by-laws for group homes were discriminatory and in violation of the Canadian Charter of Rights and Freedoms; *Globe and Mail* (21 July 1990).

53. *Callahan v. Carey*, N.Y. 2d (N.Y. 1979).

54. *Robitscher Ladd*, 1986.

55. Case No. 79-42582 (Sup. Ct. N.Y. County, 26 August 1981), as considered in *Mort* (1984).

In France, the Paris Court of Appeal, in a judgement of 17 September 1993, held that 23 homeless families who, over the years, had never obtained any tangible results from the housing applications they had addressed to the Offices d'HLM (Housing Authorities) of the City of Paris and its periphery had been obliged by necessity to occupy premises which had been abandoned for several years. The Court stated that the right to housing was included in a number of international treaties ratified by France, particularly the ICESCR (Article 11). Moreover, it stated that Article 7 of the Act of 31 May 1990 provided that the guarantee of the right to housing was an obligation of solidarity for the nation as a whole. The Court therefore granted the appellants six months to find homes.⁵⁶

Much can be learned from how housing, land and property rights have been enshrined and enforced at the international, regional and national levels. Legal texts that have been used and tested at any of these levels provide models for legislation in regions or States that fail to adequately guarantee housing, land and property rights. Similarly, legal arguments and interpretations can be borrowed from different jurisdictions and successfully used to enforce that or existing legislation in various judicial and quasi-judicial fora.

56. See UN Doc. E/CN.4/Sub.2/1994/11, paragraph 52.

VI. Recommendations for legislative reform: towards a unified and mutually consistent global body of housing rights law

“[States should] give full effect to housing rights, including through domestic development policies at the appropriate level of government and with international assistance and co-operation, giving particular attention to the individuals, most often women and children, and communities living in extreme poverty, and to security of tenure [and] ensure the observance of all their legally binding national standards in the area of housing.”¹

This concluding chapter provides recommendations regarding housing rights, as well as some reference to land and property rights. The recommendations are aimed at either the international, regional, national or local level of authority as appropriate. Taken together, the legislation and jurisprudence outlined earlier in this report provide examples of how housing rights can be more comprehensively and uniformly respected, protected and fulfilled. This chapter offers specific recommendations on how governments, civil society and others may use the lessons learned from this report. It also examines how various levels of law – be they international, regional, national and local – should be informed by the others to create the strongest protections within all legal regimes. It also discusses the roles civil society and other advocates can play with respect to creating a more comprehensive and uniform legal regime for the respect, promotion, protection and fulfilment of housing rights around the world.

VI.A. International

With Article 11(1), ICESCR provides the most advanced international standard protection of housing rights. Furthermore, as mentioned above, the Committee on Economic, Social and Cultural Rights has provided more precise meaning to the right to adequate housing through the adoption of General Comments No. 4 and No. 7.

One of the best ways of achieving a unified and consistent international protection of the right to adequate housing is universal ratification and observance of the ICESCR. Additionally, States Parties should be encouraged to withdraw any reservations, understandings or declarations to the ICESCR.

1. UN Doc. E/CN.4/RES/2001/28.

Any strategy for universal protection of housing rights must therefore include advocating for universal ratification of the entire Covenant.

To reiterate, the right to adequate housing entails a bundle of rights that are not limited to those protected in the economic, social and cultural context. A range of other international legal instruments contains relevant provision regarding housing rights. and/or land and property rights (see sub-chapter I.B above for details).

It is therefore important that universal ratification and observance of all the major international instruments that guarantee aspects of the housing rights takes place within the shortest possible time-frame. Taken together, the ICESCR and other relevant major instruments provide a unified, consistent and meaningful international set of housing rights standards and principles. All States should accept and recognise their housing rights obligations under these instruments. The housing rights embodied in those instruments should be regarded as models for regional, national and local legislative reform.

Although the human right to housing finds legal substance throughout global human rights texts, there is still no single instrument that elaborates this right to an adequate extent. As recognized in early 1996 –

*“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.”*²

At the request of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, its Special Rapporteur on the realization of the right to adequate housing, prepared a draft International Convention on Housing Rights in 1994 as a contribution to an effort to elaborate new international standards on the right to housing.³ He later reiterated that States should give serious consideration to the possible adoption of such an international convention. Thus, in 1995 the Sub-Commission requested the Secretary-General to solicit from States, United Nations bodies, the specialized agencies and relevant NGOs and CBOs their comments on the draft international convention on housing rights.⁴ Unfortunately, there seems to be no further focus and interest at the global level to pursue this matter.

Notwithstanding this, the enormous, and in many respects, growing scale of the denial of housing rights throughout the world indicates the imperative of

2. United Nations Centre for Human Rights and UNCHS (Habitat), 1996.

3. UN Doc. E/CN.4/Sub/2/1994/20, pp. 27-35. See also Leckie, 1994.

4. See UN Doc. E/CN.4/Sub.2/RES/1995/27.

renewed global legal action in support of housing rights. An approach to contribute and elaborate further within the guidance of the Habitat Agenda and existing treaties can generate an articulation of housing rights norms, including a refinement of State obligations and individual and group entitlements. Global consensus is emerging for such an articulation on housing rights, with calls increasingly coming from civil society stakeholders. Besides actively promoting the implementation of housing rights, further standard setting will also provide conceptual and legal clarity to governments pursuing the adoption of national housing rights legislation.

With respect to housing rights advocacy, interested and involved parties should use the lessons learned from mentioned judicial and quasi-judicial cases discussed in this report, and adopt strategies by which to better enforce housing rights within international mechanisms. The result of such advocacy will not only allow individuals and communities to claim and enforce their respective rights, but, if used successfully, will create a body of beneficial jurisprudence that will further define and protect housing, land and property rights. The jurisprudence of the European Court, particularly regarding Article 8 of the European Convention and Article 1 of Protocol 1 to the European Convention, could play a larger role with respect to advocacy before the United Nations Human Rights Committee. Such advocacy could include preparing parallel, or 'shadow', reports to the Human Rights Committee when it considers periodic reports from States Parties to the ICCPR. Additionally, individuals who have suffered forced eviction or similar denials of housing rights could utilise the individual complaint mechanism of the [First] Protocol to the ICCPR and thereby seek to remedy their rights. If used successfully, this latter strategy will have the secondary effect of creating a useful body of jurisprudence within the Human Rights Committee regarding housing, land and property issues.

Another important means by which to further the international protection of the right to adequate housing would be, through the adoption of an Optional Protocol to the ICESCR that allows for an individual complaint procedure.⁵ Once entered into force, such a mechanism could be used with respect to the right to adequate housing as enshrined in Art. 11(1) of the ICESCR. Such an Optional Protocol has been proposed by the Committee on Economic, Social and Cultural Rights⁶ and has been under consideration by the international

5. See Report of the Committee on Economic, Social and Cultural Rights to the Commission on Human Rights on a draft optional protocol for the consideration of communication in relation to the International Covenant on Economic, Social and Cultural Rights, contained in UN Doc. E/CN.4/1997/105, Annex.

6. See UN Docs. E/1997/22, Annex IV; E/C.12/1996/6, Annex IV; E/CN.4/2001/62; E/CN.4/2001/62/Add.1; E/CN.4/2001/62/Add.2; E/CN.4/2002/57.

community for many years. If adopted, the Optional Protocol will have many advantages with respect to guaranteeing the right to adequate housing. This is particularly true if the Optional Protocol refers to and treats actions and omissions incompatible under the ICESCR as violations of human rights obligations. Perhaps most importantly, a system for examining alleged violations of housing rights – like those currently used to examine alleged violations of civil and political rights and alleged cases of racial discrimination – will allow the international community to develop a significant body of case law and similar jurisprudence necessary to enhance the justiciability of the right to adequate housing.

VI.B. Regional

At the regional level, the three main organisations addressing human rights at the regional level, the Council of Europe, the OAS, and the OAU can each play exceptionally important roles in promoting and protecting housing rights, and can go much further than they have to date in support of housing rights.

For example, housing rights can be more expressly guaranteed in various regional human rights instruments, including in particular in the context of the European Convention, the Revised European Social Charter, the American Convention and the African Convention on Human and Peoples' Rights.⁷ These instruments, as the case may be, should be either amended or supplemented through the adoption of additional Protocols to explicitly guarantee economic, social and cultural rights, including the right to adequate housing. Such recognition will not only provide additional means by which persons and groups can enforce their respective rights, but also provide clear statements that States take their international legal obligations seriously.

Indeed, States Parties to various international covenants and conventions may be obligated to reaffirm their international legal obligations in regional instruments, and therefore must amend or supplement regional instruments that fail to explicitly guarantee economic, social and cultural rights. For example, Article 2(1) of the ICESCR obligates States Parties to take “*all appropriate*

7. The most relevant excerpts from the African Convention on Human and Peoples' Rights are outlined below –

“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.” (Article 14).

“In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.” Article 21(2).

means, including particularly the adoption of legislative measures” to implement the rights guaranteed in the Covenant. It therefore follows that the reaffirmation of such rights in regional instruments clearly constitutes an appropriate means of implementation, particularly if those regional instruments are considered the equivalent of regional legislation, as they should be.

VI.C. National

Although most States are parties to international instruments that protect housing rights, it remains important to incorporate those rights into national legislation. This is particularly true in legal systems where international treaties have little domestic legal effect. In those legal systems, courts may refuse to recognise international law as creating causes of action. Victims of human rights abuses, therefore, are often unable to avail themselves of their domestic judicial systems to either enforce their human rights or to seek redress for violations of those rights. Many States have incorporated housing rights into their respective national constitutions or legislation. In several cases, these constitutional or legislative texts are modelled after international standards and norms. By enshrining housing rights in national law, States not only fulfil their respective international legal obligations but also create domestic legal systems that empower individuals and groups in ways that allow them to enforce their rights. States, however, should consider international human rights law as providing minimum standards of protection, and should strive to adopt laws that further strengthen housing rights. States will thereby not only provide their respective residents with stronger rights to adequate housing but also provide additional models for other States.

There are other reasons to use international human rights law as a model for national legislation. For example, reliance on international law to inform domestic law will result in greater consistency across domestic legal systems with respect to universally recognised human rights. Furthermore, States that turn to international law for guidance benefit from the process by which international law is derived. This process often takes a ‘best practices’ approach. International law is influenced by a variety of ideas stemming from diverse legal, political, economic and cultural traditions. The process of codifying norms into international law reflects the acceptance of those ideas which have been deemed by the international community to be not only ‘best practices’ but also universally applicable.

Constitutional protection of housing rights is important in that constitutionally recognised rights are less likely to be threatened by legislative capriciousness. Constitutional provisions should refer to international human rights law as models of minimum standards. Constitutionally protected rights

are also important in that they take pre-eminence over rights provided by legislative or regulatory mechanisms. Constitutional provisions, additionally, are important in that they can be used to define and thereby interpret the purpose and meaning of more specific legislative and regulatory texts.

Constitutional recognition of housing rights or more general governmental duties in the housing sphere, however, are rarely sufficient to ensure that adequate housing will be guaranteed to everyone or that housing will be treated as a human right. Invariably, more specific legislation or regulations are required to transform what are generally vague statements on housing rights into concrete, practical and effective provisions. Again, however, constitutionally enshrined rights, protecting the minimum standards embodied in international law, are necessary to give proper meaning to laws and regulations adopted by legislative and administrative bodies.

The examples of constitutional clauses and legislation that appear in this report – coming from a range of legal, political, social, and economic traditions and varying levels of development – clearly illustrate that States are able to guarantee housing rights within their respective domestic legal regimes, regardless of the level of availability of resources. All States, therefore, should seriously consider enshrining housing rights, mirroring international standards, within their national legislation. States Parties to certain international covenants and conventions are in fact legally obligated to do so. States must also take positive or affirmative action through legislation, regulation and other policy to respect, protect or fulfil those rights for everyone, everywhere within their respective jurisdictions. The Habitat Agenda and the Declaration on Cities and Other Human Settlements in the New Millennium reflect the political will to undertake this task. The Habitat Agenda elaborates and provides extensive guidance on actions necessary for the full and progressive realisation of housing rights. The UNHRP is expected to assist governments and other stakeholders in this process.

Finally, civil society, including NGOs, CBOs, grass-roots organisations and other advocates must learn from the lessons presented in this report. They may want to push for the adoption of legislation as outlined in this report and the required institutionalisation at the national level. Once adopted, these stakeholders must work diligently to ensure that the legislation is implemented and abided by. This should be done through all appropriate strategies, including educating persons and groups of their rights, advocacy at all appropriate levels of government and litigation.

VI.D. Local

One of the best functions that local governments can serve within the housing rights sphere is that of regulatory enforcement, particularly by creating inspection/enforcement agencies in the area of housing safety, structural integrity, health, and adequate water, heating, sanitation, electricity and other public utilities. Indeed, General Comment No. 4 requires that for housing to be considered under international law to be adequate, there must be the availability of certain services, including –

“safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”

Furthermore, General Comment No. 4 also requires that 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.”

Local authorities are often best placed to ensure that such housing requirements are realised and thus that those specific international legal obligations are met. It is, however, often beneficial to have a minimum standard established by a larger political division, for example at the provincial or state level, in order to ensure that local authorities don't deviate from the minimum standards established under international (or national) law.

It is also the local level where security of tenure can best be promoted and forced evictions can and should be prevented. There are many demonstrative cases from all around the world where local authorities have initiated approaches for negotiated resettlement for residents of squatters and informal settlements lessons from such approaches should be more effectively utilised. The Global Campaign for Secure Tenure and the UNHRP can facilitate the essential information and experience exchange for this purpose.

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