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LEGAL RESOURCES

International and National Standards

FOR HOUSING RIGHTS



COHRE
June 2000



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International and National Standards

FOR HOUSING RIGHTS

Sources 4

COHRE June 2000

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INTRODUCTION

The last decade of the 20th century witnessed considerable advancements in human rights law and the seriousness accorded to human rights concerns by States and the international community. The prosecution of international war criminals and the development of an international criminal court, the vast expansion of attention and action on women's human rights and the growing realization of the need to prevent impunity for human rights violations are just some of the more important steps forward. These vital areas of progress received widespread media attention and as a result are quite widely known by the public.

In addition to human rights finally taking their legitimate place in the upper echelons of global, regional, national and local political structures and dynamics, great steps forward were also made in the traditionally under-emphasised area of economic, social and cultural rights. Of the legal evolution on these rights registered to date, most advocates agree that the legal standing of the human right to adequate housing has advanced perhaps further than any other social and economic norm. Indeed, the global housing rights landscape in the year 2000 bears little resemblance to the comparatively lacklustre way housing rights were treated back in 1990.

There is now a UN Housing Rights Programme providing much needed institutional support to the expansion of housing rights protections throughout the developing world. Dozens of new housing rights laws are now in place that were not there a decade ago and popular awareness of housing rights as human rights has reached a high point. New remedies to rectify housing rights violations are in place in many post-conflict situations such as Bosnia, Kosovo and East-Timor. Quasi-judicial enforcement mechanisms have also grown in line with the work of the UN Committee on Economic, Social and Cultural Rights. We cannot, however, take solace in the knowledge of these important strides forward. The global housing rights situation of many hundreds of millions of people has certainly not improved at anywhere near the pace as laws and practices should have allowed.

There can be no doubting that the oft-cited gap between law and practice - which affects so many human rights - is sadly alive and well when it comes to housing rights. This glaring disparity between the very positive legal norms in support of treating housing as a human right and the massive scale of housing deprivation throughout the world, though, must not be viewed as inevitable nor something which cannot be put right.

COHRE's many years of fighting for housing rights has taught us numerous lessons about how our finite resources can be best employed to strengthen the prospects of people actually having a realistic chance at improving their housing and living conditions. And after eight years of work on housing and eviction issues, those of us working with COHRE continue to believe that applying human rights approaches to housing problems can result in clear improvements in the lives of people whose housing rights are currently anything but capable of enforcement. If housing rights standards are applied to situations where they have not been considered in the past - in cases of post-conflict reconstruction and the rights of refugees to have their homes restored to them, to cite exciting new areas where housing rights are being used - and if human rights organisations, popular movements, governments and international agencies continue to increasingly rely on housing rights norms as the basis for action, the housing rights avenue of action will continue to gain adherents. We hope this will be the case for the months and years to come.

In this spirit, this publication provides a reasonably comprehensive compilation of international and national legal resources for housing rights. Sources No. 4 was originally published in 1994, and this larger second edition includes all major legal housing rights developments since then, and a considerably expanded set of national laws recognising housing rights.

The law in general and human rights or housing rights laws in particular cannot, of course, be seen as panaceas for rectifying social ills and on-going injustices such as forced evictions, homelessness, racial and social discrimination, the continuation or growth of inadequate housing and living conditions and other housing rights violations. In very few circumstances can the law itself be seen as a substitute for local processes and demands for the realisation of human rights. However, the official recognition in law of housing rights provisions, and with them the corresponding governmental obligations to respect and ensure these, provide a solid basis upon which grassroots groups, communities, NGOs, lawyers and others can more forcefully assert the demand for adequate housing for all. Seen in this light, international and national human rights law can become an instrument for popular empowerment.

Sources No. 4 has been designed in the pursuit of these goals and is primarily an attempt at demonstrating the solid existing basis for the human rights approach to the many dimensions of the global housing crisis. There are many ways to use this publication and in chapter 2 we have attempted to outline the many strategies which can be employed to further the global struggle for housing rights. COHRE encourages all those utilizing the standards contained in Sources No. 4 to inform us about how this is being done, in what other ways housing rights law can be made more accessible to increasing numbers of people and specifically how COHRE can contribute to this task. Finally, I would like to take this opportunity to thank Anna Pomykala and Addison Holmes for their invaluable editorial and drafting assistance towards the completion of Sources No. 4.

Scott Leckie
Executive Director
Geneva, 10 June 2000

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HOW TO USE SOURCES NO. 4

There are many impressions about the law and the procedures and remedies ostensibly entrusted with applying and enforcing the law. Among many sectors of society, particularly those who have rarely benefited in practical terms from human rights laws, a understandable degree of skepticism often exists as to actual potential of laws in promoting and guaranteeing social justice. Such views are entirely logical considering the cynicism all too frequently displayed by governments concerning their legal human rights obligations. There remain very significant shortcomings of legal approaches towards promoting issues of equality, social justice and protection of the rights of the poor.

Nevertheless, the experience of COHRE in working directly with groups in a large number of countries towards actively applying housing rights laws has revealed that reliance on such legal norms can have a very real and positive impact upon the situation of real people facing real problems. Legal resources have a much wider-ranging applicability and impact than is commonly assumed.

Utilizing the law, and international law in particular, provides a solid legal basis for holding governments accountable to protect the full spectrum of human rights of everyone and for promoting national legislative, policy and other initiatives that are in full compliance with these international standards which governments themselves have freely accepted.

Sources No. 4 reveals how widespread the recognition of housing rights is throughout international, regional and national legislation. The large number of legal foundations of housing rights, therefore, should lay to rest any opinion that housing is not a human right. Sources No. 4 is designed both as a reference document on housing rights under law, as well as comprehensive statement on the global status of housing rights today.

The extensive existence of housing rights under law, coupled with the various enforcement measures linked to many such laws, can be referred to and utilised by movements, campaigns, communities, grassroots groups, non-governmental organisations, lawyers, researchers, academics and others seeking to ensure the eventual fulfillment of these rights in many ways. Sources No. 4, however, is not only a reference document; it can also be used as a basis for developing legal demands in support of housing rights and moves at all levels toward the adoption of new, more specific legislation on housing rights.

There are many ways to use Sources No. 4, including:

- 1 - Establishing and clarifying the specific housing rights obligations of any government;
- 2 - Learning how and in what terminology housing rights have been laid down in law throughout all legal systems;
- 3 - Using existing housing rights provisions as a basis for applying pressure on governments (local, municipal and national) to respect, protect and ensure these rights and to adopt new national and local legislation consistent with other sources of housing rights;
- 4 - Comparing the housing laws and policies in any country with relevant legal sources of housing rights;

- 5 - Basing national or local campaigns for housing rights in any country on the current obligations of the government of the same country;
- 6 - Informing communities, lower-income groups, grassroots groups, non-governmental organisations, lawyers, researchers, governmental and ministerial officials and others of the existence of legally recognised housing rights;
- 7 - Invoking housing rights provisions in legal struggles in support of housing rights at all levels; and
- 8 - Publicising legal sources of housing rights throughout all forms of mass media and elsewhere.

In addition to these general uses there are a range of more specific activities that are arranged into the following categories: Distribution, translation and documentation; Legal uses; Utilizing the United Nations; Political and strategic uses; Campaigning and networking uses; and Academic and educational uses.

Many of the possible uses of Sources No. 4 indicated below may require the acquisition of the full texts of the legal instruments from which relevant clauses have been excerpted.

COHRE can provide the documents listed in the final chapter of Sources No. 4, and many of our publications and other materials can be found at www.cohre.org. Other materials, such as UN and other treaties and declarations can be obtained either from the UN information office in your country or directly from the website of the Office of the UN High Commissioner for Human Rights (www.unhchr.ch).

Distribution, Translation and Documentation

The housing rights texts contained in Sources No. 4 can be widely publicized and distributed throughout all levels of society, in an effort to achieve wider public recognition and awareness of these important documents.

The housing rights laws listed below can be translated into local languages in order to prepare accessible leaflets, brochures and booklets for wide distribution. Most of the UN treaty sources are available in the six official UN languages (Arabic, Chinese, English, French, Spanish and Russian). If material is produced in languages other than these, please send these to COHRE and we will publicise these throughout our network.

Consideration could be given to establishing a housing rights documentation centre in your country. If human rights documentation centres already exist, Sources No.4 and other housing rights documents could be provided to them. The list of publications outlined at the end of Sources No. 4, as well as the housing rights and evictions bibliography contained in COHRE's Sources No. 2 could be useful for these purposes.



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Legal Uses

These texts should be brought to the attention of those working in the legal community, in particular to human rights organisations, lawyers working for housing rights and legal aid clinics. All legal initiatives that are underway dealing with housing rights violations should be made aware of the legal sources of housing rights contained in this document.

The legal foundations of housing rights contained in Sources No. 4 can be used to propose new legislation, amend existing laws, and ensure that the basic principles of the right to adequate housing as enshrined under international law are consistent with any new legislation or amendments of current law.

Lawyers and legal activists could be requested to initiate judicial test cases on housing rights issues using the texts contained in this document.

If your Constitution does not mention the right to housing nor create specific governmental responsibility for housing the population, the legal sources in this booklet could be used as a basis for proposing constitutional amendments addressing housing rights concerns.

The housing rights laws below can be brought to the attention of the Ministry of Justice (Law Ministry) in your country, as well as to the attention to the Supreme Court, Court of Appeals and other courts, or to judges known to support housing rights.

Utilising the United Nations

The human rights texts contained in sections I and III can be used as a basis for preparing parallel reports to the relevant UN or other human rights body monitoring the housing rights provisions found in these texts. The guidelines for States reports required under the Covenant on Economic, Social and Cultural Rights are contained in COHRE's Sources No. 3 (1999).

It could be fruitful for meetings to be held between your organisation, network, movement, campaign, or coalition with your governments' appointed delegations to meetings of the United Nations human rights bodies, including: the UN Commission on Human Rights; the UN Sub-Commission on the Protection and Promotion of Human Rights; the UN Economic and Social Council (ECOSOC); the UN General Assembly (UNGA); and the UN Commission on Human Settlements (UNCHS). The names of these representatives are usually available from the Ministry of Foreign Affairs. These diplomats can be lobbied and briefed concerning international efforts on housing rights and against evictions.

Political and Strategic Uses

The housing rights standards in Sources No.4 should be used to promote human rights approaches to housing issues and the need to strengthen economic, social and cultural rights. Bearing these goals in mind, the housing rights provisions listed in this booklet should be brought to the attention of the national government (and regional and local governments), through whatever means are considered appropriate within your country. The government should be encouraged to respond to these laws, as to whether they: are duly aware of the legal obligations established in these texts; do they intend to develop new policies or laws concerning housing rights protection due to the adoption of these texts by the United Nations; would they be willing to encourage the UN to pursue the issue of housing rights violations or the creation of a new International Convention on Housing Rights in the future; and possess the will to pursue negotiations with persons and groups previously affected by housing rights violations, in accordance with these laws?

If you are involved or have contact with political parties, the texts could be brought to their attention. Political parties could be urged to include the issues contained in the standards below in their publications and in the Party programmes. Encouragement could be given to politicians to initiate debates on the floor of parliament concerning these sources of law.

Campaigning and Networking Uses

The texts should be brought to the attention of community-based organisations (CBOs), other grassroots groups and NGOs. Community-based organisations could be encouraged to convene meetings with communities and people with whom they work to discuss their housing rights under international law. Dwellers could be provided with copies of the relevant texts and descriptions of how they can use these.

If a campaign against evictions and for housing rights or other similar campaigns exist in your country or region, the laws outlined in this document could be discussed at upcoming meetings. During such discussions, plans of action based on these texts could be explored and developed.

The housing rights provisions contained below should also be brought to the notice of campaigns, movements and struggles on issues related to housing rights, such as health, livelihood, environment, social development and others. NGOs involved in issues such as the rights of women, children and indigenous peoples should be contacted regarding the empowering implications of these texts for their respective struggles.

Academic and Educational Uses

The legal sources in this document can be sent to research institutes and universities within your country or region. Requests could be made to these institutions to provide their own commentary about these legal standards and their suggestions for further action.

Legal activists, academics and scholars could be asked to carry out detailed research on the existing international legal obligations of your government to respect, protect and fulfil the right to adequate housing and how reliance on these duties could facilitate greater governmental concern about housing rights imperatives.

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INTERNATIONAL LAW AND HOUSING RIGHTS

This section of Sources No. 4 provides a comprehensive compilation of all international law sources recognising housing rights. Many terms which appear throughout this publication, and which may be unfamiliar to some readers, appear here for the first time. In order to ensure that this document is useful to everyone, we have included short explanations to some of the more frequently used terms in Sources No. 4.

States Parties:

The term *States Parties* refers to Governments which have ratified a certain Covenant or Convention, thereby creating for themselves, voluntarily, legally binding obligations.

Entered Into Force:

The term *entered into force* indicates the date that a treaty gained the force of law and thus became legally binding.

Covenants and Conventions:

Covenants and Conventions are legally binding treaties for the countries that have *ratified or acceded to them*. Countries that have only *signed* a Covenant or Convention are generally not legally bound to enforce the rights contained in such a text, however, they do undertake not to actively violate any of the rights established under a signed human rights treaty. Covenants and Conventions, if adopted under the auspices of the United Nations, are first *adopted* by the General Assembly and then opened for both signature and ratification. If your country has ratified any of the Covenants and Conventions listed below then it has clearly identifiable legal obligations to fulfil the particular housing rights provisions contained in such a treaty.

Resolutions:

Resolutions are generally adopted by bodies comprised of governments, with the exception of the Sub-Commission on Protection and Promotion of Human Rights and some others, which are often comprised of 'individual experts', rather than government representatives. For the most part, resolutions are not considered to be legally binding. However, when a Government votes for a resolution it indicates at the very least a political willingness to work towards the achievement of its contents. Resolutions adopted by the UN Security Council are legally binding. Nonetheless, the adoption of a resolution constitutes a significant political pledge of the international community towards a particular aim.

Declarations and Recommendations:

Declarations and Recommendations are generally documents of *intent*, but do not in most circumstances create legally binding obligations on the countries that have signed them. Declarations cannot be ratified in the same way treaties can. In some instances, declarations may gain the force of binding law if the declaration in question achieves the status of *customary law*. Many lawyers now believe the Universal Declaration on Human Rights, for instance, has achieved this legal status.

Regional Human Rights Instruments:

Regional human rights instruments are those treaties and declarations adopted under the auspices of a particular *regionally-based organisation*.

The Council of Europe is comprised of most countries in western Europe and an increasing number of Governments from eastern Europe. At present, there are 41 member Governments active within the Council of Europe.

The European Union (EU) is a separate institution from the Council of Europe and now has 15 member Governments, all of whom are also members of the Council of Europe.

The European Parliament is a democratically elected parliament with 576 members drawn from each of the 15 member states of the European Union.

The Organization for Security and Cooperation in Europe (OSCE) is an organisation comprised of 55 countries from continental Europe, the Caucasus, Central Asia and North America.

The Organization of American States (OAS) is an inter-governmental organisation comprised of 35 member States from Latin America, the Caribbean and North America.

The Organization of African Unity (OAU) is an inter-governmental organisation comprised of 53 member States from Africa.

3.1 International covenants and conventions

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966), adopted by United Nations General Assembly (UNGA) resolution 2200A(XXI), 16 December 1966, entered into force on 3 January 1976. State compliance with the Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights .

Article 11(1) states:

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

The following 139 countries have ratified the Covenant on Economic, Social and Cultural Rights (CESCR):

Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic People's Republic of Korea, Democratic Republic of Congo, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Greece, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Honduras, Hungary, Iceland, India, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Korea (Republic of), Kuwait, Kyrgyzstan, Latvia, Lebanon, Lesotho, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Mali, Malta, Mauritius, Mexico, Moldova, Monaco, Mongolia, Morocco, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, St. Vincent & the Grenadines, San Marino, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tanzania (United Republic of), Togo, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, Ukraine, United Kingdom, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Yugoslavia (Serbia and Montenegro), Zambia and Zimbabwe.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (1965), adopted by UNGA resolution 2106A(XX), entered into force on 4 January 1969. State Compliance with the Convention is monitored by the UN Committee on the Elimination of All Forms of Racial Discrimination .

Article 5(e) (iii) states:

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

The following 158 countries have ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD):

Afghanistan, Albania, Algeria, Antigua & Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Congo, Congo (Democratic Republic of), Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guyana, Haiti, Holy See, Hungary, Iceland, India, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kazakhstan, Korea (Republic of), Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Moldova, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, Saint Lucia, St. Vincent & the Grenadines, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Tanzania (United Republic of), Togo, Tonga, Trinidad & Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, U.S.A., Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Yugoslavia (Serbia and Montenegro), Zambia and Zimbabwe.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1979), adopted by UNGA resolution 34/180 on 18 December 1979, entered into force on 3 September 1981. State compliance with the Convention is monitored by the UN Committee on the Elimination of All Forms of Discrimination Against Women .

Article 14(2)(h) states:

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right...(h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

The following 163 countries have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):

Afghanistan, Albania, Algeria, Andorra, Angola, Antigua & Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Congo (Democratic Republic of), Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Korea (Republic of), Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritius, Mexico, Moldova (Republic of), Mongolia, Morocco, Mozambique, Myanmar, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, St. Kitts & Nevis, Saint Lucia, St. Vincent & the Grenadines, Samoa, Sao Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Singapore, South Africa, Slovak Republic, Slovenia, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tajikistan, Tanzania (United Republic of), Thailand, Togo, Trinidad & Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom, U.S.A., Uruguay, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia and Zimbabwe.

INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD (1989), adopted by UNGA resolution 44/25 on 20 November 1989, entered into force on 2 September 1990. Compliance with this Convention is monitored by the UN Committee on the Rights of the Child.

Article 27(3) states:

States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

The following 191 countries have ratified the Convention on the Rights of the Child (CRC):

Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Congo (Democratic Republic of), Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, Korea (Democratic People's Republic of), Korea (Republic of), Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia, Moldova, Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand,

Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, San Marino, Sao Tomé & Príncipe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovak Republic, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tadjikistan, Tanzania (United Republic of), Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom, U.S.A., Uruguay, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Yemen, (former) Yugoslavia, Zambia and Zimbabwe.

INTERNATIONAL CONVENTION RELATING TO THE STATUS OF REFUGEES (1951), adopted on by UNGA resolution 429(V) on 28 July 1951, entered into force on 22 April 1954 .

Article 21 states:

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

The following 134 countries are party to the Refugee Convention Relating to the Status of Refugees and the subsequent Protocol to the Convention of 1967:

Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde (only 1967 Protocol), Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, Iran, Ireland, Israel, Italy, Jamaica, Japan, Kazakstan, Kenya, Korea (Republic of), Kyrgyzstan, Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar (only 1951 Convention), Malawi, Mali, Malta, Mauritania, Monaco (only 1951 Convention), Morocco, Mozambique, Namibia (only 1951 Convention) Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, Saint Vincent and the Grenadines (only 1951 Convention), Samoa, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sudan, Suriname, Swaziland (only 1967 Protocol), Sweden, Switzerland, Tajikistan, Tanzania, Togo, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, United Kingdom, U.S.A. (only 1967 Protocol), Uruguay, Venezuela (only 1967 Protocol), Yemen, (former) Yugoslavia, Zambia and Zimbabwe.

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (1990), adopted December 1990, not yet in force. State compliance with this Convention will be monitored by the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families .

Article 43(1)(d) states:

Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to...(d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents.

The following 10 countries have ratified the Convention on Migrant Workers and Members of their Families:

Bosnia and Herzegovina, Chile, Colombia, Egypt, Malawi, Morocco, Philippines, Seychelles, Sri Lanka, and Uganda.

INTERNATIONAL LABOUR ORGANISATION (ILO) CONVENTION NO. 169 CONCERNING INDIGENOUS AND TRIBAL PEOPLES (1989) adopted 27 June 1989, *revising* the Indigenous and Tribal Populations Convention no. 107 of 1957 .

Article 2 states:

Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

Article 7 states:

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

Article 14 states:

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

Article 16 states:

Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17 states:

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

Article 20 states:

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

The following 13 States have ratified Convention 169 Concerning Indigenous and Tribal Peoples:

Bolivia, Colombia, Costa Rica, Denmark, Ecuador, Fiji, Guatemala, Honduras, Mexico, Netherlands, Norway, Paraguay, and Peru.

INTERNATIONAL LABOUR ORGANISATION (ILO) CONVENTION NO. 161 CONCERNING OCCUPATIONAL HEALTH SERVICES (1985), adopted 25 June 1985 .

Article 5 states:

Without prejudice to the responsibility of each employer for the health and safety of the workers in his employment, and with due regard to the necessity for the workers to participate in matters of occupational health and safety, occupational health services shall have such of the following functions as are adequate and appropriate to the occupational risks of the undertaking:

...(b) surveillance of the factors in the working environment and working practices which may affect workers; health, including sanitary installations, canteens and housing where these facilities are provided by the employer;

The following 18 States have adopted Convention 161 Concerning Occupational Health Services:

Benin, Bosnia and Herzegovina, Brazil, Burkina Faso, Croatia, Czech Republic, Finland, Germany, Guatemala, Hungary, Macedonia, Mexico, San Marino, Slovakia, Slovenia, Sweden, Uruguay, and Yugoslavia.

INTERNATIONAL LABOUR ORGANISATION CONVENTION NO. 117 CONCERNING SOCIAL POLICY (BASIC AIMS AND STANDARDS) (1962), adopted June 1962.

Articles 2, 4(d) and 5(2) state:

2. The improvement of standards of living shall be regarded as the principal objective in the planning of economic development;

4(d). The measures to be considered by the competent authorities for the promotion of productive capacity and the improvement of living of agricultural producers shall include: (d) the supervision of tenancy arrangements and of working conditions with a view to securing for tenants and labourers the highest practicable standards of living and an equitable share in any advantages which may result from improvements in productivity or in price levels;

5(2). In ascertaining the minimum standards of living, account shall be taken of such essential family needs of the workers as food and its nutritive value, housing, clothing, medical care and education.

The following 32 States have ratified ILO Convention No. 117 on Social Policy (Basic Aims and Standards):

Bahamas, Bolivia, Brazil, Central African Republic, Congo (Democratic Republic of), Costa Rica, Ecuador, Georgia, Ghana, Guatemala, Guinea, Israel, Italy, Jamaica, Jordan, Kuwait, Madagascar, Malta, Republic of Moldova, Nicaragua, Niger, Panama, Paraguay, Portugal, Romania, Senegal, Spain, Sudan, Syrian Arab Republic, Tunisia, Venezuela, and Zambia.

INTERNATIONAL LABOUR ORGANISATION CONVENTION NO. 110 CONCERNING PLANTATIONS (1958), adopted 24 June 1958 .

Article 88 states:

Where housing is provided by the employer the conditions under which plantation workers are entitled to occupancy shall be not less favourable than those established by national custom or national legislation.

The following 12 States have ratified Convention No. 110 Concerning Plantations:

Brazil, Cote d'Ivoire, Cuba, Ecuador, Guatemala, Liberia, Mexico, Nicaragua, Panama, Phillippines, Sri Lanka, and Uruguay.

INTERNATIONAL LABOUR ORGANISATION CONVENTION NO. 82 CONCERNING SOCIAL POLICY (NON-METROPOLITAN TERRITORIES) (1947), adopted 11 July 1947.

Article 4 states:

All possible steps shall be taken by appropriate international, regional, national and territorial measures to promote improvement in such fields as public health, housing, nutrition, education, the welfare of children, the status of women, conditions of employment, the remuneration of wage earners and independent producers, the protection of migrant workers, social security, standards of public services and general production.

2. In ascertaining the minimum standards of living, account shall be taken of such essential family needs of the workers as food and its nutritive value, housing, clothing, medical care, and education.

7. Where food, housing, clothing and other essential supplies and services form part of remuneration, all practicable steps shall be taken by the competent authority to ensure that they are adequate and their cash value properly assessed.

The following 4 States have ratified Convention No. 82 Concerning Social Policy (Non-Metropolitan Territories):

Belgium, France, New Zealand, and the United Kingdom.

INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID (1973), adopted and opened for signature and ratification by UNGA resolution 3068 (XXVIII) of 30 November 1973, entered into force on 18 July 1976 .

Article II (b) and (d) states:

For the purpose of the present Convention, the term “the crime of apartheid”, which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups....the expropriation of landed property belonging to a racial group or groups or to members thereof.

The following 101 States countries have ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid:

Afghanistan, Algeria, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Benin, Bolivia, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Czech Republic, Democratic Republic of Congo, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guyana, Haiti, Hungary, India, Iran, Iraq, Jamaica, Jordan, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lesotho, Liberia, Libyan Arab Jamahiriya, Macedonia, Madagascar, Maldives,

Mali, Mauritania, Mexico, Mongolia, Mozambique, Namibia, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Peru, Philippines, Poland, Qatar, Romania, Russian Federation, Rwanda, St. Vincent & the Grenadines, Sao Tome and Principe, Senegal, Seychelles, Slovak Republic, Slovenia, Somalia, Sri Lanka, Sudan, Suriname, Syrian Arab Republic, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukraine, United Arab Emirates.

3.2 International humanitarian law and criminal tribunals

FOURTH GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR, (1949), adopted 12 August 1949 at the Diplomatic Conference of Geneva, entered into force 21 October 1950 (www.icrc.org).

In the context of occupied territories, Article 49 states:

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

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand.... The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons...

Article 53 states:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organisations, is prohibited, except where such destruction is rendered absolutely necessary by military occupations.

Concerning regulations for the treatment of internees, Article 85 provides:

The Detaining Power is bound to take all necessary and possible measures to ensure that protected persons shall, from the outset of their internment, be accommodated in buildings or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigours of the climate and the effects of the war.

Article 134 states:

The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation.

The following 189 States have ratified the Geneva Conventions:

Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia-Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Congo (Democratic Republic of), Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Fiji,

Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, Korea (Democratic Republic of), Korea (Republic of), Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Micronesia, Moldova (Republic of), Monaco, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Tanzania (United Republic of), Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom, U.S.A., Uruguay, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe.

1977 GENEVA PROTOCOL 1 ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF INTERNATIONAL ARMED CONFLICTS, adopted 8 June 1977 at the Diplomatic Conference of Geneva, entered into force 7 December 1978.

Concerning relief in favour of the civilian population, Article 69 provides:

In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.

The following 156 States have ratified Protocol I:

Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia-Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Congo (Democratic Republic of), Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Finland, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Holy See, Honduras, Hungary, Iceland, Ireland, Italy, Jamaica, Jordan, Kazakhstan, Kenya, Korea (Democratic Republic of), Korea (Republic of), Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Macedonia, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Micronesia, Moldova (Republic of), Mongolia, Mozambique, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Palau, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Tanzania (United Republic of), Togo, Tunisia, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe.

1977 GENEVA PROTOCOL II ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND CONCERNING NON-INTERNATIONAL ARMED CONFLICTS (1977), adopted 8 June 1977 at the Diplomatic Conference, of Geneva, entered into force 7 December 1978.

Article 17 states:

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

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

The following 148 States have ratified Protocol II:

Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia-Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Holy See, Honduras, Hungary, Iceland, Ireland, Italy, Jamaica, Jordan, Kazakhstan, Kenya, Korea (Republic of), Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, Macedonia, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Micronesia, Moldova (Republic of), Mongolia, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Palau, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Suriname, Swaziland, Sweden, Switzerland, Tajikistan, Tanzania (United Republic of), Togo, Tunisia, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Uzbekistan, Vanuatu, Venezuela, Yemen, Yugoslavia, Zambia, Zimbabwe.

STATUTE OF THE INTERNATIONAL TRIBUNAL FOR THE PERSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991, adopted by Security Council resolution 827 on 25 May 1993.

Article 2: Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

Article 3: Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;

STATUTE OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR GENOCIDE AND OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF RWANDA AND RWANDAN CITIZENS RESPONSIBLE FOR GENOCIDE AND OTHER SUCH VIOLATIONS COMMITTED IN THE TERRITORY OF NEIGHBOURING STATES, BETWEEN 1 JANUARY 1994 AND 31 DECEMBER 1994, adopted by Security Council Resolution 955 of 8 November 1994 (www.un.org/icttr.org/).

Article 3: Crimes against Humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- d) Deportation;
- e) Imprisonment;
- h) Persecutions on political, racial and religious grounds;
- i) Other inhumane acts.

Article 4: Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

- a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment.

ROME STATUTE FOR THE ESTABLISHMENT OF A PERMANENT INTERNATIONAL CRIMINAL COURT (1998) adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, not yet entered into force (www.un.org/icc/).

Article 8: War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (vii) Unlawful deportation or transfer or unlawful confinement;
- b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
 - (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause;
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

3.3 International declarations and recommendations

UNIVERSAL DECLARATION ON HUMAN RIGHTS (1948), adopted and proclaimed by United Nations General Assembly resolution 217A (III) on 10 December 1948.

Article 25(1) states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

DECLARATION ON THE RIGHTS OF THE CHILD (1959), proclaimed by UNGA resolution 1386(XIV) on 29 November 1959.

Paragraph 4 states:

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end special care and protection shall be provided to him and his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

INTERNATIONAL LABOUR ORGANIZATION (ILO) RECOMMENDATION NO. 115 CONCERNING WORKERS' HOUSING (1961), adopted at the forty-fifth session of the ILO Governing Body on 7 June 1961.

Principle 2 of Section II (Objectives of National Housing Policy), paragraph 2, states:

It should be an objective of national [housing] policy to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent.

Section III (Responsibility of Public Authorities), paragraph 8(2)(b), states:

The responsibilities of the central body should include formulating workers' housing programs, such programmes to include measures for slum clearance and the re-housing of occupiers of slum dwellings.

Section VI (Housing Standards), paragraph 19 states:

As a general principle, the competent authority should, in order to ensure structural safety and reasonable levels of decency hygiene and comfort, establish minimum housing standards in the light of local conditions and take appropriate measures to enforce these standards.

Suggestions Concerning Methods of Application, paragraph 5, states:

The competent authorities should give special attention to the particular problem of housing migrant workers and, where appropriate, their families, with a view to achieving as rapidly as possible equality of treatment between migrant workers and national workers in this respect.

DECLARATION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (1963), proclaimed by UNGA resolution 1904 (XVIII) of 20 November 1963.

Article 3(1) states:

Particular efforts shall be made to prevent discrimination based on race, colour or ethnic origin, especially in the fields of civil rights, access to citizenship, education, religion, employment, occupation and housing.

DECLARATION ON SOCIAL PROGRESS AND DEVELOPMENT (1969), proclaimed by UNGA resolution 2542(XXIV) on 11 December 1969.

Part II, article 10 states:

Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals:...(f) The provision for all, particularly persons in low-income groups and large families, of adequate housing and community services.

DECLARATION ON THE RIGHTS OF DISABLED PERSONS (1975), proclaimed by UNGA resolution 3447 (XXX) of 9 December 1975.

Article 9 states:

Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom. If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age.

VANCOUVER DECLARATION ON HUMAN SETTLEMENTS (1976), adopted by the UN Conference on Human Settlements in 1976.

Section III(8) states:

Adequate shelter and services are a basic human right which places an obligation on governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action. Governments should endeavor to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, inter alia, through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities.

Chapter II (A.3) states:

The ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their homes or land or to entrench privilege and exploitation. The human settlement policies must be in conformity with the declaration of principles and the Universal Declaration of Human Rights.

DECLARATION ON RACE AND RACIAL PREJUDICE (1978), adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its twentieth session, on 27 November 1978.

Article 9(2) states:

Special measures must be taken to ensure equality in dignity and rights for individuals and groups wherever necessary, while ensuring that they are not such as to appear racially discriminatory. In this respect, particular attention should be paid to racial or ethnic groups which are socially or economically disadvantaged, so as to afford them, on a completely equal footing and without discrimination or restriction, the protection of the laws and regulations and the advantages of the social measures in forced, in particular in regard to housing, employment and health; to respect the authenticity of their culture and values; and to facilitate their social and occupational advancement, especially through education.

ILO RECOMMENDATION NO. 162 CONCERNING OLDER WORKERS (1980), adopted by the General Conference of the International Labour Organisation on 23 June 1980.

Article 5(g) states:

Older workers should, without discrimination by reason of their age, enjoy equality of opportunity and treatment with older workers as regards, in particular...(g) access to housing, social services and health institutions, in particular when this access is related to occupational activity or employment.

DECLARATION ON THE RIGHT TO DEVELOPMENT (1986), adopted by UNGA resolution 41/128 on 4 December 1986.

Article 8(1) states:

States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

3.4 Regional human rights instruments

In addition to the international legislative functions within the United Nations, several regional organisations also possess human rights law-making capacities. These include the Council of Europe, the European Union, the European Parliament, the Organisation on Security and Co-operation in Europe (OSCE), the Organization of American States (OAS), and the Organization for African Unity (OAU).

With the exception of the OAU, each of the aforementioned regional organisations has adopted regionally-specific laws explicitly recognizing the human right to adequate housing and rights directly linked to housing rights. While many of the rights recognised in the African Charter on Human and Peoples' Rights (1982) and other regional texts relate either directly or indirectly to housing rights, these are only included below if case law built on housing-related complaints has emerged from the various judicial bodies in question. Similar to the inclusion of housing rights norms within international legal standards, each of the housing rights provisions with regional human rights law is subject to distinct monitoring and enforcement mechanisms far too diverse and complex to be discussed here.

EUROPE

Council of Europe

EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (1950), adopted in Rome on 4 November 1950, entered into force on 3 September 1953, 41 States parties as of September 1999. State Compliance with the Convention is monitored by the European Court of Human Rights and Fundamental Freedoms (www.coe.fr).

Article 8(1) states:

8(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

The following 41 countries have ratified the European Convention on Human Rights and Fundamental Freedoms (ECHR):

Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, and the United Kingdom.

Article 1 of Protocol No. 1 of the ECHR states:

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

1(2) The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The following 38 countries have ratified Protocol No. 1 of the ECHR:

Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine, and the United Kingdom.

Article 2(1) of Protocol No. 4 of the ECHR states:

2(1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

The following 31 countries have ratified Protocol No. 4 of the ECHR:

Albania, Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Slovakia, Slovenia, Sweden, and Ukraine.

THE EUROPEAN SOCIAL CHARTER (1961), adopted in Turin on 18 October 1961, revised and amended in 1996 to include Article 31 on the right to housing. State compliance with this Charter is monitored by the European Committee of Independent Experts. Housing rights provisions are also found in articles 16 and 19(4) of the Charter, and within article 4 of the Additional Protocol to the Charter (www.coe.fr).

Article 31 - The right to housing

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;
3. to make the price of housing accessible to those without adequate resources.

Articles 16 and 19 state:

16. With a view to ensuring the necessary conditions for the full development of the family, which is the fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.

19(4). With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting States undertake... (4) to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect to the following matters... (c) accommodation.

Article 23 - The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of: a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

Article 30 - The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

The following 24 countries have ratified the European Social Charter and/or the Revised European Social Charter:

Austria (article 16), Belgium (16/19(4)), Cyprus (19(4)), Denmark (16), Finland (16/19(4)), France (both versions), Germany (16/19(4)), Greece (16/19(4)), Hungary, Iceland (16), Ireland (16/19(4)), Italy (both versions), Luxembourg, Malta (16), Netherlands (16/19(4)), Norway (16/19(4)), Poland, Portugal, Romania (only revised

ESC), Slovenia (only revised ESC), Spain (16/19(4)), Sweden (both versions), Turkey (16/19(4)) and the United Kingdom (16/19(4)).

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

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

The following 8 States Parties had ratified the additional protocol:

Denmark, Finland, Greece, Italy, Netherlands, Norway, Slovakia and Sweden.

EUROPEAN CONVENTION ON THE LEGAL STATUS OF MIGRANT WORKERS, adopted on 24 November 1977.

Article 13 states:

1. Each Contracting Party shall accord to migrant workers, with regard to access to housing and rents, treatment not less favourable than that accorded to its own nationals, insofar as this matter is covered by domestic laws and regulations.
2. Each Contracting Party shall ensure that the competent national authorities carry out inspections in appropriate cases in collaboration with the respective consular authorities, acting within their competence, to ensure that standards of fitness of accommodation are kept up for migrant workers as for its own nationals.
3. Each Contracting Party undertakes to protect migrant workers against exploitation in respect of rents, in accordance with its laws and regulations on the matter.
4. Each Contracting Party shall ensure, by the means available to the competent national authorities, that the housing of the migrant worker shall be suitable.

The following 8 States had ratified the 1977 European Convention on the Status of Migrant Workers:

France, Italy, Norway, Netherlands, Portugal, Spain, Sweden and Turkey.

European Union (EU)

COMMUNITY CHARTER OF FUNDAMENTAL SOCIAL RIGHTS (1989), adopted on 8 December 1989 in Strasbourg.

Article 29 states:

All disabled persons, whatever be the origin and nature of their disablement must be entitled to additional concrete measures aiming at improving their social and professional integration. These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and housing.

Resolution by the European Parliament

RESOLUTION ON SHELTER FOR THE HOMELESS IN THE EUROPEAN COMMUNITY, adopted by the European Parliament in resolution No. C 190/39 on 16 June 1987. Paragraphs 4-8 state:

4. Calls for clear priority to be given to legal rules concerning the implementation of the right to adequate housing and aid for rehabilitation and consequently for national legal provisions on vagrancy, where they exist, and particularly those on begging and sleeping rough to be adapted to the resulting requirements.
5. Asks that associations and any tenant should be offered the possibility of being assisted in legal proceedings by a natural or legal person of their choice.
6. Considers it vital that the rights of the homeless to be housed in decent and appropriate housing suited to their needs be recognised, which implies putting an end to all discrimination, whether legal or moral.
7. Considers that the punitive classification of homeless persons seeking housing as 'intentionally homeless' or 'not rehouseable', for example, contravenes the basic right of the homeless to be housed.
8. Asks that the right to a home should be guaranteed by legislation, that Member States should recognise it as a fundamental right and that no person or family should be evicted without being rehoused.

Organisation for Security and Cooperation in Europe (OSCE)

FINAL ACT OF HELSINKI (1975), adopted on 1 August 1975, includes:

The participating States [agree] to ensure equality of rights between migrant workers and nationals of the host countries with regard to conditions of employment and work, and to social security, and to endeavour to ensure that migrant workers may enjoy satisfactory living conditions, especially housing conditions.

VIENNA CONCLUDING DOCUMENT (1989), adopted on 19 January 1989 in Vienna. Principle 14 states:

The participating States recognise that the promotion of economic, social and cultural rights as well as of civil and political rights is of paramount importance for human dignity and for the attainment of the legitimate aspirations of every individual. They will therefore continue their efforts with a view to achieving progressively the full realization of economic, social and cultural rights by all appropriate means, including in particular by the adoption of legislative measures. In this context they will pay special attention to problems in the areas of employment, housing, social security, health, education and culture. They will promote constant progress in the realization of all rights and freedoms within their countries, as well as in the development of relations among themselves and with other States, so that everyone actually enjoys to the full his economic, social and cultural rights as well as his civil and political rights.

DOCUMENT OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE OSCE (1990), adopted on 29 June 1990 in Copenhagen. Article 23 states:

In the context of continuing their efforts with a view to achieving progressively the full realization of economic, social and cultural rights by all appropriate means, the [participating States] will pay special attention to problems in the areas of employment, housing, social security, health, education and culture.

THE AMERICAS

Organization of American States (OAS)

CHARTER OF THE ORGANIZATION OF AMERICAN STATES (1948), adopted in Bogota on 30 April 1948.

Article 31(k) states:

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

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

Articles 8, 11 and 23 state:

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

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

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

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

Article 11 states:

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

The following 7 countries have ratified the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights:

Ecuador, El Salvador, Mexico, Panama, Paraguay, Peru and Uruguay.

3.5 United Nations resolutions

Since 1986 a series of resolutions have been adopted by various United Nations human rights and other bodies on the issues of housing rights and forced evictions. Each of the resolutions was adopted by consensus. These resolutions are extremely important documents, for each of them has formed the legislative and political basis for instigating a broad range of activities within the United Nations on both housing rights and forced evictions. Some of the most important full texts or clauses of these resolutions are included chronologically in this sub-section.

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1998/26 entitled "Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons" on 26 August 1998, states in full:

Conscious that human rights violations and breaches of international humanitarian law are among the reasons why refugees, as defined in relevant international legal instruments, and internally displaced persons flee their homes and places of habitual residence,

Recognizing that the right of refugees and internally displaced persons to return freely to their homes and places of habitual residence in safety and security forms an indispensable element of national reconciliation and reconstruction and that the recognition of such rights should be included within peace agreements ending armed conflicts,

Recognizing also the right of all returnees to the free exercise of their right to freedom of movement and to choose one's residence including the right to be officially registered in their homes and places of habitual residence, their right to privacy and respect for the home, their right to reside peacefully in the security of their own home and their right to enjoy access to all necessary social and economic services, in an environment free of any form of discrimination,

Conscious of the widespread constraint imposed against refugees and internally displaced persons in the exercise their right to return to their homes and places of habitual residence,

Also conscious that the right to freedom of movement and the right to adequate housing includes the right of protection for returning refugees and internally displaced persons against being compelled to return to their homes and places of habitual residence and that right to return to their homes and places of habitual residence must be exercised in a voluntary and dignified manner,

Aware that intensified international, regional and national measures are required to ensure the full realization of the right of refugees and internally displaced persons to return to their homes and places of habitual residence and are indispensable elements of reintegration, reconstruction and reconciliation,

1. *Reaffirms* the right of all refugees, as defined in relevant international legal instruments, and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish;

2. *Reaffirms also* the universal applicability of the right to adequate housing, the right to freedom of movement, the right to privacy and respect for the home and the particular importance of these rights for returning refugees and internally displaced persons wishing to return to their homes and places of habitual residence;

3. *Confirms* that the adoption or application of laws by States which are designed to or result in the loss or removal of tenancy, use, ownership or other rights connected with housing or property, the active retraction of the right to reside within a particular place, or laws of abandonment employed against refugees or internally displaced persons pose serious impediments to the return and reintegration of refugees and internally displaced persons and to reconstruction and reconciliation;

4. *Urges* all States to ensure the free and fair exercise of the right to return to one's home and place of habitual residence by all refugees and internally displaced persons and to develop effective and expeditious legal, administrative and other procedures to ensure the free and fair exercise of this right, including fair and effective mechanisms designed to resolve outstanding housing and property problems;

5. *Invites* the United Nations High Commissioner for Human Rights, in consultation with the United Nations High Commissioner for Refugees, within her mandate, to facilitate the full implementation of the present resolution;

6. *Invites* the United Nations High Commissioner for Refugees, in consultation with the United Nations High Commissioner for Human Rights, to develop policy guidelines to promote and facilitate the right of all refugees and, if appropriate to her mandate, internally displaced persons, to return freely, safely and voluntarily to their homes and places of habitual residence;

7. *Decides* to consider the issue of return to place of residence and housing for refugees and internally displaced persons at its fifty-first session, under the agenda item entitled 'Freedom of Movement' to determine how most effectively to continue its consideration of these issues.

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1998/15 entitled "Women and the right to land, property and adequate housing," adopted on 21 August 1998, states in part:

1. *Affirms* 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 the equal enjoyment of the right to an adequate standard of living, including adequate housing;

2. *Strongly urges* Governments to comply fully with all of their international and regional obligations and commitments concerning women's rights to land, property, inheritance, adequate housing, including security of tenure, and an adequate standard of living;

3. *Urges Governments* to take all necessary measures in order to amend and/or repeal laws and policies pertaining to land, property and housing which deny women security of tenure and equal access and rights to land, property and housing, to encourage the transformation of customs and traditions which deny women security of tenure and equal access and rights to land, property and housing, and to adopt and enforce legislation which protects and promotes women's rights to own, inherit, lease or rent land, property and housing;

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1997/19 entitled “Women and the right to adequate housing and to land and property,” adopted on 27 August 1997, states in part:

1. *Reaffirms* the universal nature and existence of the right to adequate housing in terms of its relevance to all human rights with respect to women;
2. *Encourages* States to comply fully with all their international and regional obligations and commitments concerning the legally recognised rights of women to land, property, inheritance, adequate housing including security of tenure, an adequate standard of living and the continuous improvement of living and housing conditions and to create opportunities for women to acquire training, education and information in all matters related to these rights;
3. *Reminds* Governments of the critical importance of providing women with legal resources and human rights information and education to address the violence they experience in relation to housing, and to enact and enforce laws and policies that protect women against violence in this context;
14. *Requests* Governments, the organisations and bodies of the United Nations and the specialized agencies actively to support local, national and international initiatives, including the development of human rights indicators, aimed at assessing and improving the housing and living conditions of women throughout the world, in full consultation with and with the full participation of women themselves, their representatives and community-based non-governmental organisations and other relevant groups;

UN Commission on Human Settlements Resolution 16/7 entitled: “The realization of the human right to adequate housing,” adopted on 7 May 1997, states in part:

The Commission on Human Settlements,

Aware of the right of everyone to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water, and sanitation, and to the continuous improvement of living conditions, as stated in paragraph 11 of the Habitat Agenda...

Reaffirming the commitment of States, as set out in paragraph 39 of the Habitat Agenda, to the full and progressive realization of the right to adequate housing as provided for in international instruments...

4. *Requests* that all States within the overall context of an enabling approach, to take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing, as outlined in paragraph 61 of the Habitat Agenda;

UN Commission on Human Settlements resolution entitled “Implementation of the outcome of the second United Nations Conference on Human Settlements (Habitat II),” adopted on 2 December, 1996, states in part:

5. *Reaffirms* the commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments, and in that context recognises an obligation by Governments to enable people to obtain shelter and protect and improve dwellings and neighborhoods;

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1995/27 entitled "Promoting the realization of the human right to adequate housing," adopted on 24 August 1995, states in part:

Reaffirming the human right of every woman, man and child to a safe and secure place to live in peace and dignity,

Concerned also that Governments having the legal obligation to respect, protect and fulfil the human right to adequate housing have failed to take the necessary steps to ensure the full realization of this right for everyone entitled to it,

3. *Strongly encourages* all Governments faithfully to implement their existing legal obligations concerning the human right to adequate housing, including the adoption of effective legislation and policies respecting, promoting and protecting the human right to adequate housing, the removal of all obstacles to the full realization of this right and the repeal of legislation and policies which contradict housing rights standards, and to refrain from violating the human right to adequate housing.

UN Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1994/8 entitled "Children and the right to adequate housing," adopted on 26 August 1994, states in part:

Conscious that one of the areas where the indivisibility and interdependence of human rights and of the rights of children become most apparent is with respect to the existence of widespread poverty leading to inadequate housing and living conditions, *Aware* of the worsening situation around the world of the living conditions of children and of the fact that tens of millions of children are being forced to live in the streets, in slums and on pavements, and that this number is growing daily,

Concerned at the especially adverse living conditions of children belonging to vulnerable groups, including indigenous people and ethnic, racial, religious and other minorities,

Reminds Governments to comply to the maximum extent of available resources with all existing obligations concerning the legally recognised rights of children to an adequate standard of living and the continuous improvement of living and housing conditions.

UN Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1993/36 entitled "The Right to Adequate Housing", adopted on 26 August 1993, states in part:

3. *Strongly encourages* all governments to pursue effective policies and legislation aimed at creating conditions towards ensuring the full realization of the right to adequate housing of the entire population concentrating on those currently homeless or inadequately housed, and to take into account the particularly negative impact on housing and living conditions that may result from the adoption of economic adjustment and other policies based exclusively upon the dictates of the free-market.

UN Commission on Human Settlements resolution 14/6 entitled “The Human Right to Adequate Housing”, adopted on 5 May 1993, states in part:

3. *Urges* all States to cease any 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;
4. *Invites* all States to repeal, reform or amend any existing legislation, policies, programmes or projects which in any manner negatively affect the full realization of right to adequate housing;
5. *Encourages* all States to take steps according to their available resources, with a view to achieving progressively the full realization of the right to adequate housing, by appropriate means, including particularly the adoption of legislative measures;
6. *Urges* all States to comply with existing international agreements concerning the right to adequate housing, and to this end, to establish in accordance with the human settlements parts of international human rights law, appropriate monitoring mechanisms to provide, for national and international consideration, accurate data and indicators on the extent of homelessness, inadequate housing conditions, persons without security of tenure and other issues arising from the right to adequate housing and providing insights into policy, structural and other impediments to the efficient operation of the shelter sector.

UN Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1992/26 entitled “Promoting the Realization of the Right to Adequate Housing”, adopted on 22 August 1992, states in part:

2. *Encourages* all States to pursue effective policies and legislation aimed at creating conditions aimed at ensuring the full realization of the right to adequate housing of the entire population, concentrating on those vulnerable groups that are homeless or inadequately housed.

UN Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/26 entitled “Promoting the Realization of the Right to Adequate Housing”, adopted on 29 August 1991, states in part:

The Sub-Commission urges all States to pursue effective policies and adopt legislation aimed at ensuring the realization of the right to adequate housing of the entire population, concentrating on those currently homeless or inadequately housed.

UN Commission on Human Rights resolution 1988/24 entitled “The Realization of the Right to Adequate Housing”, adopted on 7 March 1988, states in part:

The Commission on Human Rights decides to keep the question of the right to adequate housing under periodic review.

UNGA resolution 42/146 entitled “The Realization of the Right to Adequate Housing,” adopted on 7 December 1987, states in part:

The General Assembly reiterates the need to take, at the national and international levels, measures to promote the right of all persons to an adequate standard of living for themselves and their families, including adequate housing;

and calls upon all States and international organisations concerned to pay special attention to the realization of the right to adequate housing in carrying out measures to develop national shelter strategies and settlement improvement programmes within the framework of the Global Strategy for Shelter to the Year 2000.

Economic and Social Council (ECOSOC) of the United Nations resolution 1987/62 entitled “The Realization of the Right to Adequate Housing”, adopted on 29 May 1987, states in part:

ECOSOC recognises that the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights provide that all persons have the right to an adequate standard of living for themselves and their families, including adequate housing, and that States should take appropriate steps to ensure the realization of this right.

Economic and Social Council (ECOSOC) of the United Nations resolution 1987/37 entitled “The International Year of Shelter for the Homeless,” adopted on 28 May, 1987, states in part:

ECOSOC recalls that the objective of activities before and during the Year is to improve the shelter and neighborhoods of some of the poor and disadvantaged by the end of 1987, according to national priorities, and to demonstrate by the Year 2000 ways and means of improving the shelter and neighborhoods of the poor and disadvantaged.

UN Commission on Human Rights resolution 1987/22 entitled “The Realization of the Right to Adequate Housing”, adopted on 10 March 1987, states in part:

The Commission on Human Rights reiterates the need to take appropriate measures, at the national and international levels, for promoting the right of all persons to an adequate standard of living for themselves and their families, including adequate housing.

UNGA resolution 41/146 entitled “The Realization of the Right to Adequate Housing”, adopted on 4 December 1986, states in part:

The General Assembly expresses its deep concern that millions of people do not enjoy the right to adequate housing.

UN Commission on Human Rights resolution 1986/36 entitled “The Realization of the Right to Adequate Housing”, adopted on 12 March 1986, states in part:

The Commission on Human Rights reiterates the right of all persons to an adequate standard of living for themselves and their families, including adequate housing.

3.6 Habitat II

HABITAT AGENDA, adopted by the second United Nations Conference on Human Settlements (Habitat II) at Istanbul, Turkey on 14 June 1996.

Article 39 states:

We reaffirm our commitment to the full and progressive realization of the right to adequate housing, as provided for in international instruments. In this context, we recognise an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighbourhoods. 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.

Article 40 states:

We further commit ourselves to the objectives of:

(b) 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 the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies;

(d) Ensuring transparent, comprehensive and accessible systems in transferring land rights and legal security of tenure;

(j) Eradicating and ensuring legal protection from discrimination in access to shelter and basic services, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; similar protection should be ensured against discrimination on the grounds of disability or age;

(l) Promoting shelter and supporting basic services and facilities for education and health for the homeless, displaced persons, indigenous people, women and children who are survivors of family violence, persons with disabilities, older persons, victims of natural and man-made disasters and people belonging to vulnerable and disadvantaged groups, including temporary shelter and basic services for refugees;

Article 46 states:

We commit ourselves to the goal of gender equality in human settlements development. We further commit ourselves to:

(a) Integrating gender perspectives in human settlements related legislation, policies, programmes and projects through the application of gender-sensitive analysis;



Bhutanese refugee children, Jhapa, Nepal

3.7 Agenda 21 (UNCED, 1992)

Agenda 21, adopted by the UN World Conference on Environment and Development (UNCED) held in Rio de Janeiro in June 1992, states:

Chapter 7.6:

Access to safe and healthy shelter is essential to a person's physical, psychological, social and economic well-being and should be a fundamental part of national and international action. The right to adequate housing as a basic human right is enshrined in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. Despite this, it is estimated that at the present time, at least one billion people do not have access to safe and healthy shelter and that if appropriate action is not taken, this number will increase dramatically by the end of the century and beyond.

Chapter 7.9(b):

All countries should adopt and/or strengthen national shelter strategies, with targets based, as appropriate, on the principles and recommendations contained in the Global Strategy for Shelter to the Year 2000. People should be protected by law against unfair eviction from their homes or land.

Chapter 7.9(c):

All countries should, as appropriate, support the shelter efforts of the urban and rural poor, the unemployed and the no-income group by adopting and/or adapting existing codes and regulations, to facilitate their access to land, finance and low-cost building materials and by actively promoting the regularization and upgrading of informal settlements and urban slums as an expedient measure and pragmatic solution to the urban shelter deficit.

Chapter 7.30(f):

All countries should consider developing national land-resource management plans to guide land-resource development and utilization and, to that end, should...establish appropriate forms of land tenure that provide security of tenure for all land users, especially indigenous people, women, local communities, the low-income urban dwellers and the rural poor.

3.8 The UN global shelter strategy

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

Point 13 states:

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

4

CONSTITUTIONAL SOURCES OF HOUSING RIGHTS

Many national Constitutions throughout the world specifically address housing issues, and some contain explicit references to the right to adequate housing. Others suggest more the general responsibility of the State to ensure adequate housing and living conditions to the population at large. Approximately 40 percent of the world's Constitutions refer to housing or housing rights. There are, of course, no guarantees -legal or otherwise- that the mere inclusion of housing rights within a Constitution will inevitably lead to this right being implemented. However, the establishment within Constitutions of both individual and family 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 actions towards ensuring this right.

The general manner by which most Constitutional provisions are worded, implies the necessity of adopting implementing legislation, designed to specify the bundle of entitlements for individuals and families, as well as the legal duties of the national, regional and municipal authorities. In many countries, if not most, it remains difficult at best to base legal complaints on housing rights before a court of law exclusively upon Constitutional provisions. Moreover, many courts remain reluctant to entertain complaints dealing essentially with economic, social and cultural rights, let alone housing rights as such. Indeed, where such test-cases have been submitted by homeless or inadequately housed persons and groups, these have often resulted in failure.

Despite these shortcomings, many struggles, campaigns and movements are currently underway geared towards including housing rights clauses within national Constitutions, either through amendment or through the inclusion of such articles within new Constitutions. The inclusion of housing rights within national Constitutions alone will generally do little to alter existing economic, political and social processes currently impeding access for everyone to a place to live in peace and dignity. However, when legislatures have agreed to include housing rights clauses in the highest laws of the land, this signifies at the very least, a political commitment that everyone possesses not just a need for housing, but is entitled to it as a matter of rights. In an effort to reveal where housing rights appear in Constitutions, a comprehensive listing of all constitutional sources of housing rights follows.

Argentina (1853)

Article 14

The state shall grant the benefits of social security, which shall be complete and irrenounceable. In particular, the States shall establish....full protection of the family; protection of the family welfare; economic compensation to families and access to decent housing.

Armenia (1995)

Article 31

Every citizen is entitled to an adequate standard of living for himself or herself and his or her family, to adequate housing, as well as to the improvement of living conditions. The state shall provide the essential means to enable the exercise of these rights.

Bahrain (1973)

Article 5(b)

The State shall ensure the accomplishment of necessary social security for citizens in old age, sickness, inability to work, orphanhood, widowhood or unemployment. The State shall also provide them with services of social insurance and medical care, and strive to protect them from ignorance, fear and poverty.

Article 9(f)

The state shall strive to provide *housing* for citizens with limited income.

People's Republic of Bangladesh (1972)

Article 15

It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing its citizens:

a) The provision of the basic necessities of life, including food, clothing, *shelter*, education and medical care.

Belgium (1994)

Article 23(3)

Everyone has the right to enjoy a life in conformity with human dignity. Towards this end, the law, the decree or rules established under article 134 guarantee, taking into account the corresponding obligations, economic, social and cultural rights of which they determine the conditions for their implementation. These rights include, in particular, the right to adequate *housing*.

Bolivia (1967)

Article 199

The state shall protect the physical, mental and moral health of children, and shall uphold the rights of children to a *home* and to an education.

Brazil (1988)

Article 7(IV)

The following are rights of both urban and rural workers, in addition to other rights directed toward improving their lot in society: A minimum wage established by law and unified on a nationwide basis; such wages to be capable of meeting the basic necessities of life of the worker and his family, in terms of housing, food, education, health care, leisure, clothing, hygiene, transportation, and social security; it shall be subject to periodic readjustments that preserve its purchasing power and may not be used as a reference value for any purpose.

Article 21(XX)

It shall be the competence of the Federal Government to: establish guidelines for urban development, housing, infrastructure and transport.

Article 23(IX)

The Union, the States, the Federal District and the Municipalities have a mutual responsibility to: promote housing construction programmes and the improvement of living and basic sanitation conditions.

Article 183

Those who are squatters in an urban area of up to 250,000 (m²), for a continuous period of at least five (5) years, without claim for housing, will be able to have its domain unless he/she has another urban or rural property.

Article 187 (VIII)

Agricultural policy shall be planned and implemented pursuant to law, with regular participation in that process by the production sector--involving both rural producers and workers--as well as by the marketing, warehousing and transportation sectors, considering the following in particular: housing for the rural worker.

Article 203 (II)

Social assistance shall be furnished to whomever may need it, regardless of whether they have contributed to social security. The objectives of this service are as follows: shelter for needy children and adolescents.

Burkina Faso (1991)

Article 18

Education, instruction, formation, employment, social security, housing, leisure, health, protection of motherhood and of infancy, assistance to the aged or handicapped persons and in social cases, artistic and scientific creation shall constitute the social and cultural rights recognised by the present Constitution which aims to promote them.

Cambodia (1993)

Article 31

The Kingdom of Cambodia shall recognise and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights.

Colombia (1991)

Article 51

All Colombian citizens are entitled to live in dignity. The State will determine the conditions necessary to give effect to this right and will promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programmes.

Article 64

It is the duty of the State to promote the gradual access of agricultural workers to landed property in individual or assosational form and to services involving education, health, housing, social security, recreation, credit, communications, the marketing of products, technical and management assistance with the purpose of improving the incomes and quality of life of the peasants.

Article 366

The general welfare and improvement of the population's quality of life are social purposes of the State. A basic objective of the State's activity will be to address unsatisfied public health, educational, environmental, and potable water needs. For this purpose, public social expenditures will have priority over any other allocation in the plans and budgets of the nation and the territorial entities.

Congo (1992)

Article 34(1)

The State is the guarantor of public health. Every citizen shall have the right to a level of life sufficient to assure his health, his well-being and that of his family, notably food, clothing, shelter, medical care as well as necessary social services.

Costa Rica (1949)

Article 65

The State shall promote the construction of low-cost *housing* and create a family homestead for workers.

Dominican Republic (1966)

Article 15(b)

The establishment of every Dominican home on land or with improvements belonging to the occupant is declared to be of high social interest. To this end, the State shall encourage the development of public credit on advantageous terms, intended to make it possible for all Dominicans to possess a comfortable and sanitary home.

Article 17

The State shall also offer social assistance to the poor. This assistance shall consist of food, clothing, and, in so far as possible, adequate housing.

Ecuador (1979)

Article 13

Every person enjoys the following guarantees...the right to a standard of living that assures health, food, clothing, *housing*, medical assistance and the necessary social services.

Article 19(14)

The right to a standard of living that ensures the necessary health, food, clothing, *housing*, medical care and social services.

Article 30

The State shall promote housing programmes of a social interest. It shall provide the means of subsistence to whomever lacks resources and is not in a position to acquire them and can find no one or no agency obligated by law to provide them.

Article 50

To make the right to *housing* and to the conservation of the environment effective, municipalities may appropriate, reserve and control access for future development in accordance with the law.

El Salvador (1984)

Article 51

The law shall specify what enterprises and establishments, due to special conditions, are required to provide a worker and his family with suitable housing, schools...and other social services and attention necessary for their well-being.

Article 119

Housing construction is declared to be a matter of social interest. The state shall endeavour to permit the greatest possible number of Salvadorian families to become homeowners. It shall undertake to see that every farm owner shall provide a sanitary and comfortable home for his workers and tenants, and shall provide facilities to enable small owners to do so.

Equatorial Guinea (1982)

Article 20(13)

Every person enjoys the right to a standard of living which ensures health, nutrition, education, clothing, housing, medical care and necessary social services.

Fiji (1990)

Article 16(7)

Subject to the provisions of the next following subsection, no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating houses or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

Finland (1919)

Section 15a(4)

It shall be the task of public authorities to promote the right of everyone to a dwelling and to support the efforts of persons to provide their own housing.

Greece (1975)

Article 21(4)

The provision of *homes* to those who are *homeless* or live in inadequate housing conditions shall be the subject of special care by the State.

Guatemala (1985)

Article 105

Through specific entities, the State will support the planning and construction of housing projects, establishing adequate systems of financing that would make it possible to involve the different programmes so that the workers may opt for adequate *housing* and meet health requirements. The owners of enterprises are obliged to make available to their workers--in cases established by law--the housing units that meet the above-mentioned requirements.

Article 119(g)

The following are basic obligations of the state: to promote on a priority basis the construction of popular *housing* through systems of financing so that a larger number of Guatemalan families may have title to it. When resulting or cooperatively-held housing is involved, the system of land tenure may be different.

Guyana (1980)

Article 26

Every citizen has the right to proper housing accommodation.

Haiti (1987)

Article 22

The State recognises the right of every citizen to decent housing, education, food and social security.

Honduras (1982)

Article 118

The homestead shall be the subject of special legislation designed to protect and further it.

Article 123

All children shall enjoy the benefits of social security and education. Every child shall have the right to grow and develop in good health, for whom special care shall be given during the prenatal period, as much for the child as for the mother, both being entitled to food, *housing*, education, recreation and adequate medical services.

Article 141

The law shall determine which employers, according to their capital and the total number of workers, shall be required to provide them and their families with educational, health, *housing* and other services.

Article 178

All Hondurans have the right to decent *housing*. The State shall design and implement housing programmes of social interest.

Article 179

The State shall promote, support and regulate the creation of systems and mechanisms for the utilization of internal and external resources to be used for solving the housing problem.

Article 180

All internal and external credits and loans obtained by the State for housing shall be regulated by law for the benefit of the ultimate user of the credit.

Article 181

The social fund for housing is hereby created. Its purpose shall be to develop housing in urban and rural areas. A special law shall regulate its organisation and functioning.

Article 345

Agrarian reform is an essential part of the overall development strategy of the nation and therefore any other economic and social policies that the government may approve shall be formulated and executed in harmony with it, especially those related, inter alia, to education, housing, employment, infrastructure, marketing and technical and credit assistance.

India (1949)

Article 39

The State shall, in particular, direct its policy towards securing –

(a) that the citizen, men and women equally, have the right to an adequate means of livelihood;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 43

The State shall endeavor to secure, by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Iran (1980)

Article 3(12)

In order to attain the objectives specified in article 2, the government of the Islamic Republic of Iran has the duty of directing all its resources to the following goals: the planning of a correct and just economic system, in accordance with Islamic criteria, in order to create welfare, eliminate poverty, and abolish all forms of deprivation with respect to food, housing, work, health care, and the provision of social insurance for all.

Article 31

A suitable dwelling, according to need, is the right of every Iranian person and family. The government is responsible for laying the groundwork to accomplish this, with the first consideration given to those who are in need, in particular villagers and labourers.

Article 43(1)

The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria: the provision of basic necessities for all citizens: *housing*, food, clothing, hygiene, medical treatment, education and the necessary facilities for the establishment of a family.

Italy (1947)

Article 47

The Republic encourages and safeguards savings in all its aspects and supervises, coordinates and controls the issuing of credit. It encourages the investment of private savings in the purchase of *homes* or holdings directly farmed by the owners and direct or indirect investment in large productive enterprise.

Kenya (1969)

Article 82(7)

subject to sub-section (7), no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

Republic of Korea (1948)

Article 35(3)

The state shall endeavour to ensure comfortable *housing* for all citizens through housing development policies and the like.

Democratic People's Republic of Korea (1972)

Article 26

The state increases the role of the county and strengthens its guidance and assistance to the countryside in order to eliminate the difference between town and country and the class distinction between the working class and peasantry. The state undertakes the building of production facilities of the cooperative farms and modern houses in the countryside at its expense.

Article 69

The State provides functional modern *houses* and hostels for the working people. The State builds modern rural houses at its expense and offers them free for the use of co-operative farmers.

Mali (1992)

Article 16

Education, instruction, formation, work, housing, leisure, health and social protection shall constitute recognised rights.

Mexico (1983)

Article 4

Every family has the right to enjoy decent and proper housing. The law shall establish the instruments and necessary supports to reach said goal.

Nepal (1990)

Article 26(1)

The state shall adopt a policy which is directed towards the upliftment of the standard of living of the general public through the development of the basic structures like public education, health, *housing* and employment of the general public of all the regions by making equitable distribution of investment of the economic resources for the balanced development in the various geographical region of the country.

Netherlands (1984)

Article 22(2)

It shall be the concern of the authorities to provide sufficient living accommodation.

Nicaragua (1987)

Article 64

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

Nigeria (1989)

Article 17 (2)(d)

The state shall direct its policy toward ensuring that suitable and adequate *shelter*, food, water supply, reasonable national minimum living wage, old age and pensions, unemployment, and sick benefits and welfare for the disabled are provided for all citizens.

Norway (1996)

Article 110(c)

It is the responsibility of the authorities of the State to respect and ensure human rights. Specific provisions for the implementation of treaties hereof shall be determined by law.

Islamic Republic of Pakistan (1990)

Article 38(d)

The State shall provide basic necessities of life such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.

Panama (1978)

Article 109

The State shall establish a national housing policy with the purpose of ensuring the enjoyment of this social right to all of the population, especially low-income groups.

Paraguay (1992)

Article 57

Every senior citizen has the right to receive full protection by his family, society, and the State. State organisations will promote the well-being of senior citizens by providing them with social services to meet their needs for food, health, *housing*, culture, and leisure.

Article 59

Family property is hereby recognised as an institution of a social interest. The law will implement a system under which it will operate. Family property will consist of the family house or estate and its furniture and working tools, which cannot be subjected to any attachment.

Article 100

Every inhabitant of the Republic has the right to decent *housing* facilities.

The State will establish conditions conducive to the implementation of this right and will promote housing projects of social interest specially designed for low-income families through adequate methods of financing.

Peru (1979)

Article 10

It is the right of the family to enjoy a decent home.

Article 18

The State takes care preferentially of the basic needs of the individual and his family in terms of food, *housing* and recreation. The law regulates the use of urban land in keeping with the common good and the participation of the local community. The State promotes the execution of public and private programmes of urban development and housing. The States supports and promotes cooperatives, mutual aid societies and, in general, housing mortgage institutions and programmes of self-built construction and rental purchase. It grants incentives and tax exemptions in order to make construction cheaper. It creates conditions for the granting of long-term, low-interest credits.

Philippines (1986)

Article 13(9)

The State shall be law, and for the common good, undertake, in co-operation with the private sector, a continuing programme of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centres and resettlement areas. It shall also promote adequate employment opportunity to such citizens. In the implementation of such programs the State shall respect the rights of small property owners.

Article 13(10)

Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be resettled.

Poland (1997)

Article 75 (1)

Public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combatting *homelessness*, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen.

Article 79(5)

The Republic of Poland, being mindful of the interests of the family, shall strive to improve *housing* conditions, and, in co-operation with citizens, shall develop and promote various forms of residential construction, especially those promoted by co-operative societies, and shall now care in a proper management of housing resources.

Portugal (1982)

Article 65(1)

Everyone shall have the right for himself and his family to a dwelling of adequate size satisfying standards of hygiene and comfort and preserving personal and family privacy.

Article 65(2)

In order to safeguard the right to housing it shall be the duty of the State to: (a) draw up and put into effect a housing policy as part of general regional planning and based upon town plans which safeguard the existence of an adequate network of transport and social facilities; (b) To promote, in conjunction with local authorities, the construction of economic and social housing; and (c) promote private building subject to the public interest.

Article 65(3)

The State shall adopt a policy aimed at introducing a system of rents compatible with family incomes and of individual ownership of dwellings

Article 65(4)

The State and local authorities shall exercise effective supervision over immovable property, take urban lands into national and municipal ownership where necessary and lay down rights of use.

Russian Federation (1993)

Article 40(1)

Each person has the right to housing. No one may be arbitrarily deprived of housing.

Article 40(2)

Bodies of state power and bodies of local self-government encourage housing construction and create conditions for the exercise of the right to housing.

Article 40(3)

Housing is provided free or at affordable cost to low-income and other citizens indicated in the law who require housing from the state, municipal and other housing stocks in accordance with the norms prescribed by law.



Village hut in the Solomon Islands

Sao Tome and Principe (1975)

Article 48(1)

All have the right to housing and to an environment of human life and the duty to defend it.

Article 48(2)

It is incumbent upon the state to plan and execute a housing policy inserted in the plans for zoning of the territory.

Seychelles (1993)

Article 34

The state recognises the right of every citizen to adequate and decent shelter conducive to health and well-being and undertakes either directly or through or with the co-operation of public or private organisations to facilitate the effective realization of this right.

Slovenia (1991)

Article 78

The State shall create the conditions necessary to enable each citizen to obtain proper housing.

South Africa (1997)

Section 26(1)

Everyone has the right to have access to adequate housing.

Section 26(2)

The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

Section 26(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.

Section 28(1)

Every child has the right -
(c) to basic nutrition, *shelter*, basic health care services and social services;

Spain (1978)

Article 47

All Spaniards have the right to enjoy decent and adequate *housing*. The authorities shall promote the conditions necessary and establish pertinent norms to make this right effective, regulating the use of land in accordance with the general interest to prevent speculation. The community shall share in the increased values generated by urban activities of public bodies.

Democratic Socialist Republic of Sri Lanka (1977)

Article 27(2)(c)

The state is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which includes: the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities.

Suriname (1987)

Article 49

A housing plan shall be determined by law, aimed at the procurement of a sufficient number of affordable *houses* and state control of the use of real estate for public housing.

Switzerland (1874)

Article 34(6)

1. The Confederation shall take measures aimed at encouraging the construction of housing, especially through a lowering of costs, and providing the opportunity for owning a dwelling or house. Federal legislation shall determine the conditions for giving assistance grants.

2. The Confederation shall have the following particular powers:

(b) to support efforts aimed at improving housing and environmental conditions for families, persons with limited earning capacity, the elderly, the disabled, and persons in care.

Turkey (1982)

Article 57

The State shall take measures to meet the needs for *housing*, within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects.

Socialist Republic of Viet Nam (1992)

Article 58

Citizens have the rights to own legally-earned income, savings, *homes*, means of activities and production, capital and other assets of business or other economic organisations. The state protects citizens' legal rights to ownership and inheritance.

Article 62

Citizens have the right to build homes according to a plan and law. The rights of tenants and landlords shall be protected by law.

5

SELECTED NATIONAL HOUSING RIGHTS LAWS

Constitutional recognition of housing rights or more general governmental duties regarding the housing sphere are rarely, if ever, sufficient to ensure that adequate housing will be ensured to everyone or that housing will be treated as a human right. Invariably, implementing legislation or policies will be required to transform what are generally vague provisions of housing rights into concrete, practical and effective laws and regulations. Obviously, existing laws protecting tenure rights or equality of treatment provisions or legal measures prohibiting racial or other forms of discrimination in the housing sphere can provide significant legal protection to those entitled to housing as a human right. Such measures, however, often fail to cover the entire scope of the entitlements arising from the recognition of housing rights. With a view to giving some idea as to how some countries have sought to provide the needed legislative substance to housing rights, several short examples of domestic housing rights legislation are outlined in this section.

Australia

Racial Discrimination Act (1975)

Section 12.

(1) It is unlawful for a person, whether as a principal or agent:

(a) To refuse or fail to dispose of any estate or interest in land, or any residential or business accommodation, to a second person;

(b) To dispose of such an estate or interest or such accommodation to a second person on less favourable terms and conditions than those which are or would otherwise be offered;

(c) To treat a second person who is seeking to acquire or has acquired such an estate or interest or such accommodation less favourably than other persons in the same circumstances;

(d) To refuse to permit a second person to occupy any land or any residential or business accommodation; or

(e) To terminate any estate or interest in land of a second person or the right of a second person to occupy any land or any residential or business accommodation, by reason of the race, colour or national or ethnic origin of that second person or any relative or associate of that second person.

(2) It is unlawful for a person, whether as a principal or agent, to impose or seek to impose on another person any term of condition that limits, by reference to race, colour or national or ethnic origin, the persons or class of persons who may be the licensees or invitees of the occupier of any land or residential or business accommodation.

France

Law 90/449 of 31 May 1990 (visant á la mise en oeuvre du droit au logement, France)

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

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 Council 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.

Germany

The Federal Welfare Assistance Act (1994)

Section 15(a)

The local sponsor of welfare assistance may, exercising due discretion, also pay rent arrears in order to maintain the dwelling and prevent homelessness.

Section 72

Persons (including the homeless) who have special social difficulties, which they cannot themselves overcome, prevent them from participating in community life may claim assistance in particular situations. This assistance includes all measures necessary to avert, eliminate or ease the difficulties. This means, in particular, advice and personal attention for the applicant, as well as measures to help procure and maintain as dwelling.

India

Madhya Pradesh Act No. 15 of 1984 (India) Slum Dwellers Protection Act

Section 3: Settlement of Land

3(1) Notwithstanding anything contained in any law for the time being in force, the land occupied by a landless person in any urban area on the 10th day of April 1984 shall be deemed to have been settled in his favour on the said date.

3(2) The Authorised Officer may either settle the land in actual occupation of the landless person not exceeding 50 sq. metres in leasehold rights in his favour or any other land up to 50 sq. metres.

3(3) The leasehold rights accrued under sub-section (1) shall not be transferable by sub-lease or in any other manner whatsoever except by inheritance.

3(4) If the landless person to whom leasehold rights have accrued in respect of any land under this Act, transfers such land in contravention of the provisions of sub-section (3), the following consequences shall ensue, namely--(i) the lease shall stand cancelled on the date of such transfer; (ii) such transfer shall be null and void; (iii) no leasehold rights shall accrue to the transferee in respect of such land.

Section 4: Restoration of Possession

4(1) If any landless person to whom leasehold rights have accrued in the land under section 3 is dispossessed from that land or any part thereof otherwise than in due course of law, the Authorised Officer shall on an application made to him by the said landless person within six months from the date of dispossession restore such possession....

Section 5: Penalty

5(1) Any person who--(i) wrongfully dispossesses or attempts to dispossess an occupier of a dwelling house; or (ii) recovers or attempts to recover rent in any manner from an occupier of dwelling house--shall be punished with rigorous imprisonment which shall not be less than three months....

Indonesia

Law of the Republic of Indonesia (Law No.4 (1992))

Article 5

(1) Every citizen has the right to occupy and/or enjoy and/or own a decent house in a healthy, safe, harmonious and orderly environment.

(2) Every citizen has the obligation and responsibility to participate in the construction of real estate and residential areas.

Jamaica

Housing Act (1968)

Section 4

(1) The Ministry of Construction (Housing) under the Act is supposed to construct houses for persons in the low-income categories.

Republic of Korea

The Housing Construction Promotion Act (1972)

Article 1

The purpose of this act shall be to provide stability to the residential life of citizens who do not own their own homes, to provide for the construction and supply of dwelling units, and to raise housing funds to bring about the purpose of this Act.

Article 2

The State shall plan and put into actions measures necessary to ensure the stability and improvement of citizens' residential lives.

New Zealand

The Human Rights Commission Act (1977)

Article 25

(1) Land, Housing and Other Accommodation: It shall be unlawful for any person, on his own behalf or on behalf or purported behalf of any principal:

- (a) To refuse or fail to dispose of any estate or interest in land or any residential or business accommodation to any other person; or
- (b) To dispose of such an estate or interest or such accommodation to any person on less favourable terms and conditions than are or would be offered to other persons; or
- (c) To treat any person who is seeking to acquire or has acquired such an estate or interest or such accommodation differently from other persons in the same circumstances; or
- (d) To deny any person, directly or indirectly, the right to occupy any land or any residential or business accommodation; or
- (e) To terminate any estate or interest in land or the right of any person to occupy any land or any residential or business accommodation - by reason of the sex, marital status or religious or ethical belief of that person.

Islamic Republic of Pakistan

Sind Katchi Abadis Act (1987)

Section 11

(2) Subject to the provisions of the Act, the Authority shall exercise such powers and perform such functions as may be necessary for carrying out the purposes of the Act. Following functions are in Section 11(2) of the Act:

- i) implement policies formulated by Government for the development or improvement of the areas of the Katchi Abadis and regularization of such Katchi Abadis.
- ii) Lay-down guidelines for the implementation of such policies by the concerned authorities;
- iii) identify the Katchi Abadis or areas thereof which may be developed, improved or regularized under this Act and also identify the Katchi Abadis or areas which cannot be regularized as Katchi Abadis.
- iv) arrange or carry out detailed physical surveys, census of occupants of the Katchi Abadis and prepare or cause to be prepared plans and amelioration plans, and designs of infrastructural works in connection with the regularization and development of the Katchi Abadis;
- v) formulate development and financial programmes in respect of the Katchi Abadis and determine implementation strategy of such programmes;
- vi) Oversee the operation of the fund;
- vii) evict or cause to be evicted unauthorized persons or remove or cause to be removed encroachments from a Katchi Abadi or any area which is not regularisable as Katchi Abadis in accordance with the law for the time being in force;
- viii) acquire, hold, control and administer, movable or immovable property or dispose of such property;
- ix) prepare or cause to be prepared scheme or schemes and execute or cause to be executed such scheme or schemes.
- x) undertake, where necessary, low cost housing and re-development schemes for resettlement of shiftees from the Katchi Abadis and the areas which are not regularisable as Katchi Abadis;
- xi) enter into and perform contracts;
- xii) incur expenditures for carrying out the purposes of this Act;
- xiii) arrange civic amenities and civic services in the Katchi Abadis through the Councils or other concerned agencies;
- xiv) take such steps as may be necessary or conducive to the attainment of the objects of the Authority.

Republic of the 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:

(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;

(e) Encourage more effective peoples' participation in the urban development process; and

(f) Improve the capability of local government units in undertaking urban development and housing programs and projects.

Section 14 - Limitations on the Disposition of Lands for Socialized Housing

No land for socialized housing, including improvements or rights thereon, shall be sold, alienated, conveyed, encumbered or leased by any beneficiary of this Program except to qualified program beneficiaries as determined by the government agency concerned. ...

Section 15 - Policy

Socialized housing, as defined in Sec. 3 hereof, shall be the primary strategy in providing shelter for the underprivileged and homeless. However, if the tenurial arrangement in a particular socialized housing program is in the nature of leasehold or usufruct, the same shall be transitory and the beneficiaries must be encouraged to become independent from the Program within a given period of time, to be determined by the implementing agency concerned.

Section 18 - Balanced Housing Developments

The Program shall include a system to be specified in the Framework plan whereby developers of proposed subdivision projects shall be required to develop an area for socialized housing equivalent to at least twenty percent (20%) of the total subdivision area or total subdivision cost, at the option of the developer, within the same city or municipality, whenever feasible, and in accordance with the standards set by the Housing and Land Use Regulatory Board and other existing laws. ...

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 29 - Resettlement

Within two (2) years from the effectivity of this Act, the local government units, in coordination with the National Housing Authority, shall implement the relocation and resettlement of persons living in danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and in other public places such as sidewalks, roads, parks, and playgrounds. The local government units, in coordination with the National Housing Authority, shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of affected families.

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.

Russian Federation

Law of the Russian Federation on Basic Principles of Federal Housing Policy Law (1992)

Preamble

Determines basic principles of exercising [the] constitutional right of citizens of the Russian Federation for housing under new social and economic conditions, establishes [the] general basis for legal regulation of housing relationships ... [and] development of diverse forms of property and types of real estate in [the] housing sector.

The goal of federal housing policy is to ensure social guarantees for the right to citizens for housing, to accomplish construction and rehabilitation of state, municipal and private housing stock; to create conditions for the attraction of non-budget sources of financing...; to develop private property, to protect entrepreneurs and owners rights in the housing sector; and to promote competition in construction, repair and maintenance of the housing stock, manufacture of building materials, articles and goods to furnish houses.

Article 2

Citizens of the Russian Federation have the right to housing. This right is exercised through providing residential units in state and municipal housing stock ... with the social norms of residential floor space, as well as through rent, purchase or construction of housing at one's own expense without any limit to floor space.

To citizens who are not provided with housing according to the established norms, the state renders assistance through developing construction of buildings of state and municipal stock intended for providing residential premises under [lease], as well as through the system of compensations (subsidies) and privileges on payment of construction, maintenance and repair of housing.

Article 15

Where the government evicts a tenant in state housing for nonpayment of rent or utilities, the government must provide the tenant with alternative living accommodations within the hostel norm. ...

South Africa

Restitution of Land Rights Act (1994) (Act No. 16106)

Act:

To provide for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.

Whereas the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides for the restitution of a right in land to a person or community dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law;

And Whereas legislation for this purpose is to be designed to promote the protection and advancement of persons, groups or categories of person disadvantaged by unfair discrimination, in order to promote their full and equal enjoyment of rights in land:

Section 2- Enforcement of claim for restitution

(1) A person shall be entitled to enforce restitution of a right in land if -

- (a) he or she is a person or community contemplated in section 121(2) of the Constitution or a direct descendant of such a person; and
- (b) the claim for such restitution is lodged within three years after a date fixed by the Minister by notice in the *Gazette*.

(2) The date contemplated in subsection (1), shall be a date not earlier than the earliest of the dates contemplated in section 43.

(3) The date contemplated in section 121(2)(a) of the Constitution is 19 June 1913.

Section 3- Claims against nominees

Subject to the provisions of this Act a person shall be entitled to claim land title in land if such claimant or his, her or its antecedent -

- (a) was prevented from obtaining or retaining title to the claimed land because of a law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2) of the Constitution had that subsection been in operation at the relevant time; and
- (b) proves that the registered owner of the land holds title as a result of a transaction between such registered owner or his, her or its antecedents and the claimant or his, her or its antecedents, in terms of which such registered owner or his her or its antecedents held the land on behalf of the claimant or his, her or its antecedents.

Section 4- Establishment of Commission on Restitution of Land Rights

(1) There is hereby established a commission to be known as the Commission on Restitution of Land Rights. ...

Section 10.- Lodgement of claims

(1) Any person or the representative of any community who is of the opinion that he or she or the community which he or she represents is entitled to claim restitution of a right in land as contemplated in section 121 of the Constitution, may lodge such claim, which shall include a description of the land in question, and the nature of the right being claimed, on the form prescribed for this purpose by the Chief Land Claims Commissioner under section 16. ...

The United Kingdom

Housing Act (1985, as amended)(Homeless Persons Act)

Section 63- Interim duty to accommodate in case of apparent priority need

(1) If the local housing authority have reason to believe that an applicant may be homeless and have a priority need, they shall secure that accommodation is made available for his occupation pending a decision as a result of their inquiries under section 62....

Section 65- Duties to persons found to be homeless

(1) This section has effect as regards the duties owed by the local housing authority to an applicant where they are satisfied that he is homeless.

(2) Where they are satisfied that he has a priority need and are not satisfied that he became homeless intentionally, they shall, unless they notify another local housing authority in accordance with section 67 (referral of application on grounds of local connection), secure that accommodation becomes available for his occupation.

(3) Where they are satisfied that he has a priority need but are also satisfied that he became homeless intentionally, they shall -

(a) secure that accommodation is made available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation, and

(b) furnish him with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

Section 66 - Duties to persons found to be threatened with homelessness

(1) This section has effect as regards the duties owed by the local housing authority to an applicant where they are satisfied that he is threatened with homelessness.

(2) Where they are satisfied that he has a priority need and are not satisfied that he become threatened with homelessness intentionally, they shall take reasonable steps to secure that accommodation does not cease to be available for his occupation.

Section 69

(1) A local housing authority may perform any duty under section 65 or 68 (duties to persons found to be homeless) to secure that accommodation becomes available for the occupation of a person--

(a) by making available suitable accommodation held by them under Part II (provision of housing) or any enactment, or

(b) by securing that he obtains suitable accommodation from some other person, or

(c) by giving him such advice and assistance as will secure that he obtains suitable accommodation from some other person,...

Protection from Eviction Act (1977)

Concerning unlawful eviction, harassment, and quiet enjoyment, Section 1 (as amended by section 29 of the Housing Act 1988) provides:

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, 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 –to give up the occupation of the premises or any part thereof, or to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

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

Concerning tenancies and licences not statutorily protected, Section 3 (amended 1980 and 1988 to expand the categories of tenancies and licences covered) provides:

(1) Where any premises have been let as a dwelling under a tenancy which is neither a statutorily protected tenancy nor an excluded tenancy and –

(a) the tenancy (in this section referred to as the former tenancy) has come to an end, but

(b) the occupier continues to reside in the premises or part of them, it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises.

United States of America

Civil Rights Code (1949, as amended)256

Section 1441 - Congressional declaration of national housing policy

The Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective established shall be:

(1) private enterprise shall be encouraged to serve as large a part of the total need as it can;

(2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need;

(3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life;

(4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural nonfarm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and

(5) governmental assistance for decent, safe, and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own account and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill. ...

Civil Rights Code (1968, as amended, 'Fair Housing Act')512

Section 3604 - Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful--

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

6

GENERAL COMMENT NO. 4 ON THE RIGHT TO ADEQUATE HOUSING

Background

On 12 December 1991 the United Nations Committee on Economic, Social and Cultural Rights adopted General Comment No. 4 on the Right to Adequate Housing by a unanimous vote. The Committee is legally responsible for examining the degree to which countries which have ratified the Covenant on Economic, Social and Cultural Rights have undertaken the necessary steps leading towards the full enjoyment of the rights found in Covenant for all citizens.

This General Comment is the single most authoritative legal interpretation of what the right to housing actually means in legal terms under international law. The Comment provides a broad-reaching definition of the right to housing and contains numerous clauses and principles which are, in one way or another, relevant for all countries.

Movements, campaigns and organisations working for housing rights can, therefore, compare the situation in their country with the principles found in the General Comment with a view to determining whether or not their government is acting in full compliance with the rights and obligations arising from the Covenant.

Moreover, the contents of General Comment No. 4 can be utilised as a basis for developing national housing rights acts, housing policy and towards incorporating housing rights concerns into national human rights legislation.

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

1. Pursuant to article 11(1) of the Covenant, States parties “recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. The human right to adequate housing which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee, and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1998/22, para. 312) and fourth sessions¹. In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987), including the Global Strategy for Shelter to the year 2000 adopted by the General Assembly² in its resolution 42/191 of 11 December 1987. The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.³

3. Although a wide variety of international instruments address the different dimensions of the right to adequate housing,⁴ article 11(1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions.

4. Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11(1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed.⁵ There is no indication that this number is decreasing. It seems clear that no State party is free of significant problems of one kind or another in relation to the right to housing.

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

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

7. In the Committee’s view the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. Thus, “inherent dignity of the human person” from which the rights in the Covenant are said to derive requires that the term “housing” be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11(1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means....adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities--all at a reasonable cost.”⁶

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

a) *Legal security of tenure*: Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

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

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

d) *Habitability*: Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the *Health Principles of Housing*⁷ prepared by the World Health Organization (WHO) which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) *Accessibility*: Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernable governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

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

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



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

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

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the

right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

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

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, *inter alia*, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to “provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing”. They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in “illegal” settlements, those subject to forced evictions and low-income groups.

14. Measures designed to satisfy a State party’s obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate. While in some States public financing of housing might most usefully be spent on direct construction of new housing, in most cases, experience has shown the inability of Governments to fully satisfy housing deficits with publicly built housing. The promotion by States parties of “enabling strategies”, combined with a full commitment to obligations under the right to adequate housing, should thus be encouraged. In essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.

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

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

17. The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

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

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

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

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

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

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

5 A/43/8/Add.1.

6 *ibid.*

7 Geneva, World Health Organization, 1990. Prepared by the UN Special Rapporteur on Housing Rights, August 1994.

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DRAFT INTERNATIONAL CONVENTION ON HOUSING RIGHTS

*prepared by the UN Special Rapporteur on Housing Rights, August 1994
(UN Doc: E/CN.4/Sub.2/1994/20 (Ch. IX))*

Background

The Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its forty-third session in August 1991, entrusted Mr. Rajindar Sachar with producing a working paper on the right to adequate housing, with a view to determining how best to further both the recognition and the enforcement of that right. Mr. Sachar submitted a working paper and two progress reports to the Sub-Commission. The working paper (1992) focused primarily on what he recognised as the primary causes of the global housing crisis and various legal issues relating to the human right to adequate housing. The principal reasons for the still widespread denial of housing rights throughout the world, according to the Special Rapporteur, were: i) the failures of government and development policies; ii) housing discrimination; (iii) environmental health, disasters and housing; (iv) the withholding of information crucial to housing; (v) exploitation in the housing sphere; (vi) speculation and the commoditization of housing; (vii) forced evictions; (viii) armed conflict; (ix) the criminalization of housing; (x) structural adjustment programmes and debt; (xi) poverty and the deprivation of means; and (xii) the perpetuation of homelessness (E/CN.4/Sub.2/1992/15, paras. 22-57).

The Special Rapporteur's first progress report (E/CN.4/Sub.2/1993/15) provided a detailed legal analysis of the legal obligations of States to respect, protect and fulfil housing rights, resulting in the development of a synthesis of governmental obligations based on international legal standards. The first progress report also touched on the question of justiciability of housing rights and gave an overview of housing right jurisprudence.

In his second progress report (1994), with a view to clarifying the nature of the right to adequate housing and the still common neglect of this norm, the Special Rapporteur outlined several misperceptions and misinterpretations of the right to adequate housing which continue to hinder efforts to fulfil this right in a universal sense. These are: (1) social housing is invariably suspect; (2) national wealth increases home ownership; (3) housing rights are less fundamental than property rights; (4) the private sector or the market will guarantee housing for all; (5) legislative recognition of housing rights insufficient to ensure the realization of these rights; (6) housing rights are non-justiciable; (7) most housing is built by the public and private commercial sector; (8) measuring homelessness is impossible; (9) squatters are criminals; (10) housing is a problem only in the developing countries; (11) public expenditure on housing is sufficient; and (12) the right to adequate housing is unrelated to other social concerns (E/CN.4/Sub.2/1994/20, paras. 17-45).

The Special Rapporteur also included in his second progress report a draft international convention on housing rights (E/CN.4/Sub.2/1994/20, chap. IX). The convention was formulated on the belief that a comprehensive housing rights instrument would be an important and beneficial step towards facilitating the full satisfaction of the right to adequate housing. The draft convention remains under consideration by the Sub-Commission on Protection and Promotion of Human Rights.

Draft International Convention on Housing Rights

Preamble

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

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

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

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

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

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

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

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

Section One: Rights and Entitlements

Article 1: Housing Rights for Everyone

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

Article 2: Non-discrimination

1. The right to adequate housing shall be exercised in an environment free from any form of discrimination. Discrimination based on level of income, gender, disability, race, ethnicity, creed, age, family status, sexual orientation, presence of children, receipt of welfare or public assistance, medical status, citizenship, employment status or social condition shall be prohibited by law.
2. Everyone shall have access to judicial or other effective means of enforcing laws designed to prevent all forms of discrimination.

Article 3: Gender Equality

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

Article 4: Chronically Ill-Housed Groups

1. The housing rights of chronically ill-housed groups and/or those with special housing requirements or those with difficulties acquiring adequate housing shall be accorded a measure of priority, in both the housing laws and policies of all governments.
2. Chronically ill-housed groups shall be defined as disabled persons, elderly persons, low-income groups, minority groups, persons with medical problems, refugees, youth, or any other individual or group of a similar nature.

Article 5: The Special Rights of the Homeless

1. Homeless individuals, couples or families have an enforceable right to the immediate provision by public authorities of adequate, self-contained and appropriate housing space. Hostels, emergency shelters or bed & breakfast accommodation shall constitute insufficient measures under the terms of this article.
2. Any homeless individual, couple or family refused the provision of housing space by public authorities, for whatever reason, shall have an automatic right to appeal such decisions.

Article 6: Security of Tenure

1. Everyone has the enforceable right to security of tenure over their housing, protecting all persons from, inter alia, forced or arbitrary eviction, expropriation or relocation, in the absence of an alternative acceptable to those affected, notwithstanding the type of housing inhabited.
2. The right to security of tenure shall mean that all children, women and men have a right to a home and to a safe and healthy environment. Every person shall have a right to a home free from violence, threat of violence or other form of harassment, including the right to respect of the home.
3. Every person shall be protected under law from all forms of economically motivated evictions through sudden or excessive rent increases, for reasons of profit, for reasons of speculation or for reasons that fail to recognise the rights of the tenants.
4. This article shall apply to everyone, including persons, families and groups including squatters, and those with shifting housing circumstances, in particular, nomads, travellers and Romani (gypsies).
5. Any person, institution, legal subject, public body or any other entity which violates any clause of this article shall be held criminally liable under law.

Article 7: Access to Services

1. Everyone has a right to access to safe drinking water, electricity and lighting, heating (if necessary), sanitation and washing facilities, cooking facilities, food storage, ventilation and drainage.
2. Everyone has a right to community services, including garbage removal, health care facilities, employment opportunities, schools, reasonably-priced public transport, child care, and emergency fire and ambulance services.

Article 8: Affordability

1. Everyone has a right to affordable housing. Steps must be taken by governments to guarantee that personal or household financial costs associated with housing are not allowed to reach a level which in any way threatens the attainment and satisfaction of other basic needs.
2. Everyone who has a proven need, shall have a right to social subsidies as a means of ensuring the right to affordable housing.

Article 9: Habitability

1. Everyone has a right to safe, healthy and habitable housing, including adequate space, privacy and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors.
2. Any person who alleges her or his rights under this article to have been violated shall have access to administrative and legal remedies.

Article 10: Accessibility

1. Everyone has a right to accessible housing. This right applies especially to those with special housing needs, including but not limited to mentally and physically disabled persons, the elderly, the terminally ill, HIV-positive individuals, persons with persistent medical problems and children.
2. Everyone has a right to obtain subsidies for any necessary housing modifications required to ensure accessibility.

Article 11: Housing Location

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

Article 12: Participation and Control

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

Article 13: Information

1. Everyone has a right to any and all information, whether private or public, concerning their housing. This includes information concerning people's legal housing rights and other housing laws, housing supply, the

location of unused housing or housing for rent, environmental hazards in close proximity to housing, and so forth.

2. The proponents of any project, plan, programme or envisioned legislation impacting in any manner upon the housing circumstances of any person shall be required by law to provide all available information to affected persons and communities in a timely and comprehensive fashion.

Article 14: Housing Finance

1. Everyone has a right to fair housing finance and credit on reasonable and equitable terms. All persons, notwithstanding any distinction, shall have an equal right to obtain such finance or credit towards the enjoyment of their housing rights.

2. This article applies equally to owner-occupiers and tenants. Housing finance should not disproportionately benefit individuals with mortgages.

Article 15: Legal Remedies

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

Section Two: Governmental Obligations

Article 16: General Duties

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

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

Article 17: Legislative Action

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

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

Article 18: Legislative Review

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

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

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

Article 19: Monitoring and Evaluation

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

2. An effective system of 'housing rights indicators' equally relevant to all States shall be developed, with a

view to measuring accurately compliance with the present Convention and other existing legal duties concerning any aspect of housing rights.

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

Article 20: Obligations to Respect

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

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

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

Article 21: Obligations to Ensure

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

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

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

Article 22: Housing Supply

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

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

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

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

Article 23: Housing Affordability

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

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

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

Article 24: Housing Adequacy

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

Article 25: Provision of Infrastructure and Services

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

Article 26: Prevention of Speculation

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

Article 27: Special Duties

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

Article 28: Provision of Judicial Remedies

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

Article 29: Training and Education

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

Article 30: International Obligations

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

Article 31: International Co-operation

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



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