

# Circle of Rights

## Economic, Social & Cultural Rights Activism: A Training Resource

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### SECTION 5- UNDERSTANDING SPECIFIC ESC RIGHTS

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## MODULE 13

### **The Right to Adequate Housing** **USING MODULE 13 IN A TRAINING PROGRAM**

#### **The Purpose of Module 13**

*The purpose of this module is to clarify the content and scope of the right to housing.*

*The module*

- *presents international, regional and national standards guaranteeing the right to housing;*
- *enumerates the state's obligations;*
- *elaborates on the guarantees provided under article 11 of the ICESCR as contained in General Comments 4 and 7 by the CESCR; and*
- *considers strategies for ensuring the enjoyment of the right to housing.*

#### **Introduction**

Housing forms an indispensable part of ensuring human dignity. "Adequate housing" encompasses more than just the four walls of a room and a roof over one's head. Housing is essential for normal healthy living. It fulfills deep-seated psychological needs for privacy and personal space; physical needs for security and protection from inclement weather; and social needs for basic gathering points where important relationships are forged and nurtured. In many societies, a house also serves an important function as an economic center where essential commercial activities are performed.

Despite global recognition of the importance of housing to human welfare and survival, it is estimated that over one billion people live in inadequate housing while over 100 million people are homeless. [\[1\]](#) Governments claim lack of capacity and resources to implement programs and undertake reforms aimed at creating the conditions for expanding access to housing. The

right to adequate housing therefore provides a unique paradigm for monitoring the steps taken by states towards the provision of housing through citizens' demands and insistence upon the fulfillment of this basic human right.

## **Housing as a Human Right-International and Regional Standards**

### *International Standards*

The right to adequate housing is founded and recognized under international law. Enunciated under article 25(1) of the Universal Declaration of Human Rights, the right to adequate housing has been codified in other major international human rights treaties. Article 11(1) of the ICESCR provides that "States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate . . . housing, and to the continuous improvement of living conditions."

The CESCR has issued two General Comments clarifying the scope and meaning of the right to housing as enshrined in the Covenant. The texts of General Comments 4 and 7 appear on pages 256-66.

### *Several nonbinding declarations, resolutions and recommendations by the UN and its specialized agencies related to housing as a human right*

- Declaration on Social Progress and Development (1969), part II, art. 10
- Declaration on the Rights of Disabled Persons (1975), art. 9
- Vancouver Declaration on Human Settlements (1976), section III (8)
- International Labour Organization (ILO) Recommendation No. 115 (1961), principle 2
- ILO Recommendation No. 62 Concerning Older Workers (1980), art. 5(g)
- Declaration on the Right to Development (1986), art. 8(1)
- United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities resolution 1994/8 on "Children and the Right to Adequate Housing" adopted 23 August 23 1994
- United Nations Commission on Human Rights resolution 1993/77 on "Forced Evictions," adopted on 10 March 1993
- United Nations Commission on Human Settlements resolution 14/6 on "The Human Right to Adequate Housing," adopted 5 May 1993
- United Nations General Assembly resolution 42/146 on the "Realization of the Right to Adequate Housing," adopted 7 December 1987, which "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 organizations concerned to pay special attention to the realization of the right to adequate housing in carrying out measures to develop national shelter strategies and settlement improvement programmes within the framework of the Global Strategy for Shelter to the Year 2000."

Similar provisions on the right to adequate housing are contained in the Convention on the

Discrimination Against Women, the Convention on the Rights of the Child, the International Convention on the Suppression and Punishment of the Crime of Apartheid, and the International Convention Relating to the Status of Refugees.

### ***Regional Instruments***

Several regional human rights instruments also guarantee to every individual the right to adequate housing. Under the Charter of the Organization of American States (OAS), article 31(k), "Member States agree to dedicate every effort to achieve . . . adequate housing for all sectors of the population." The European Social Charter, the European Convention on Human Rights and Fundamental Freedoms, the European Convention on the Legal Status of Migrant Workers, the Resolution on Shelter for the Homeless in the European Community, and the Final Act of Helsinki all contain express provisions and references to the right to adequate housing.

The African Charter on Human and Peoples' Rights makes no specific mention of the right to adequate housing. However, other provisions such as the right to life (art. 4) and the right to physical and mental health (art. 16) arguably provide a basis for the assertion of the right to housing.

### **National Legal Recognition**

Many national constitutions and municipal laws in an increasing number of states around the world now embody express or implied provisions on the right to adequate housing. They further strengthen the basis for claiming the implementation of that right at the domestic level. A recent example is the 1996 Constitution of the Republic of South Africa, which expressly guarantees the right to adequate housing and prohibits the practice of forced eviction. The Constitution provides that:

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other means, within its available resources, to achieve the progressive realization of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

The South African Constitution also provides for the justiciability of the bill of rights, including the right to adequate housing. It expressly confers legal standing to aggrieved persons and their representatives to approach the courts to enforce their rights.



Under most constitutions, however, housing is classified under state policy and not as part of a bill of rights. Therefore, they are said to be aspirational and nonjusticiable. (See [Module 22](#).) The result is that in many states parties to the ICESCR there exists a conflict between legally binding international obligations related to the right to adequate housing and constitutional provisions that inhibit their local enforcement.

### **The Right to Adequate Housing-Obligations of**

#### **States**

State obligations vis-à-vis the right to adequate housing are frequently misunderstood. They do not mean that the state is required to build housing for the entire population, or that housing should be provided free of charge to the populace, or even that this right will manifest itself in the same manner in all places at all times. Rather, recognition of the right to housing by a state means:

- The state undertakes to endeavor by all appropriate means to ensure that everyone has access to affordable and acceptable housing.
- The state will undertake a series of measures which indicate policy and legislative recognition of each of the constituent aspects of the right to housing.
- The state will protect and improve houses and neighborhoods rather than damage or destroy them.

The essential elements of the state's obligation to implement all ESC rights (including the right to adequate housing) are encapsulated under article 2(1) of the ICESCR. (See [Module 9](#)).

In addition, article 2(2) of the Covenant prohibits discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, in the exercise of the rights enunciated in the Covenant. This provision can and should be used as the basis for addressing several institutional, legal and cultural barriers to access of women to land and housing.

Recent developments in the body of international human rights law reaffirm that the right to adequate housing is guaranteed to traditionally disenfranchised members of society, including women, internally displaced persons, and refugees. In August 1998, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities urged governments, in view of the

fact that "women's experiences of poverty are particularly severe and prohibit women from escaping the poverty trap," to "review their laws, policies, customs and traditions pertaining to land, property and housing rights, [and] to amend and repeal laws and policies . . . which deny women security of tenure and equal access and rights to land, property and housing."<sup>[2]</sup> The sub-commission has also recognized the right of refugees and internally displaced persons to the free and fair exercise of their "right to return to [their] home and place of habitual place of residence," while stating that "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."<sup>[3]</sup>

### **Content of Article 11 of the ICESCR-the Right to Adequate Housing**

The CESCR in its sixth session, in 1991, adopted a detailed General Comment on article 11(1) of the Covenant dealing with the right to adequate housing. <sup>[4]</sup> The following are some of the major points from that Comment (the full text of General Comment 4 appears on pp. 256-61):

- ***The interrelationship between the right to housing and other rights***

The CESCR noted that "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"(para. 9).

#### ***Interdependence of Rights Housing and Education***

In 1990 the military government of Nigeria evicted the 300,000 residents of the Maroko community in Lagos, Nigeria, providing resettlement for only 3 percent. The government subsequently provided no alternative schooling opportunities for the children of Maroko, whose education was abruptly cut off by the forced eviction.

The Social and Economic Rights Action Center (SERAC) in Lagos has developed a line of cases designed to challenge in the courts violations of the ESC rights of the people of Maroko. In one of those cases, *Akilla v. Lagos State Government and Others*, SERAC is challenging the denial of the right to primary education to over 9,000 pupils of the eleven Maroko schools demolished along with the community. The suit seeks to compel the Lagos state government to institute a remedial educational program to address the needs of the displaced students. It hinges on the government's obligation to provide free and compulsory primary education as guaranteed under the ICESCR, the African Charter on Human and Peoples' Rights, and other human rights instruments ratified by Nigeria.

- ***Holders of the right to housing***

The CESCR categorically stated that the right to adequate housing applies to everyone. It clarified that the term "himself and his family" does not impose "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 . . . not be subject to any form of discrimination" (para.6).

### ***Scope of the right to housing***

The right to housing should not be interpreted in a narrow or restrictive sense, but should be seen as the right to live somewhere in security, peace and dignity. It should be ensured to all persons irrespective of income or access to economic resources. The reference in article 11(1) must be read as referring not just to housing, but to adequate housing (para. 7).

- ***Meaning of adequate housing***

While acknowledging that social, economic, cultural, climatic, ecological and other factors, in part, determine adequacy, the CESCR identified the following as essential components of adequacy (para. 8):

- Legal security of tenure
- Availability of services, materials, facilities and infrastructure
- Affordability
- Habitability
- Accessibility
- Location
- Cultural adequacy



It stated that, regardless of their level of development, states must take certain steps immediately to guarantee the right. One such step is monitoring to ascertain the full extent of homelessness and inadequate housing within its jurisdiction (para. 10).

The committee stressed the need to give priority to social groups living in unfavorable conditions, and noted that policies and laws should not benefit already advantaged social groups at the expense of others. It acknowledged

that economic crises arising from external factors may have a bearing on the right. However, it stressed that "the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction" (para. 11). It would be inconsistent with obligations under the Covenant if living and housing conditions decline because of policy and legislative decisions taken by states parties. It also identified the adoption of a national housing strategy as an important step.

- ***The right to housing and international cooperation***

A substantial proportion of international assistance should be devoted to creating conditions leading to a higher number of persons being adequately housed. The CESCR also stressed that "international financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing" (para. 19).

## **Forced Eviction**

The CESCR in its General Comment 4, adopted in 1991, stated 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" (para. 18). In 1997, the CESCR issued General Comment 7 specifically on forced evictions. [\[5\]](#) The following is a summary of that Comment (the full text appears on pp. 262-66):

- ***Definition of the term "forced evictions"***

Forced evictions, in the context of General Comment 7, are "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection" (para. 4).

- ***Violations arising from forced evictions***

Forced evictions manifestly breach the rights enshrined in the ICESCR. In addition, the practice of forced evictions may result in "violations of civil and political rights, such as the right to life, the right to the security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions" (para. 5).

- ***Vulnerable groups and forced evictions***

"Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction" (para. 11).

- ***Obligations of states parties regarding forced evictions***

The obligations of states parties with regard to forced evictions arise from article 11(1) dealing with the right to housing. The right not to be forcefully evicted is complemented by the guarantee against "arbitrary or unlawful interference" with one's home guaranteed under article 17(1) of the ICCPR (para. 9).

- ***Obligation to enact legislation against forced evictions***

Enacting legislation against forced evictions "is an essential basis upon which to build a system of effective protection." The CESCR clarified that legislation must also apply in relation to "all agents acting under the authority of the State or who are accountable to it" (para. 10).

- ***Procedural protection and due process***

Where eviction is considered justifiable, it should be "carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality." The committee suggested a number of procedural protections (paras. 15 and 16).

### ***Advocacy Work with Multilateral Agencies The Nigerian Example***

While states are primarily involved in forced evictions, nonstate actors, including multilateral development institutions and transnational corporations, have also become important perpetrators of large-scale forced evictions.

On 16 June 1998, the Social and Economic Rights Action Center (SERAC) filed a Request for Inspection before the World Bank Inspection Panel. Framed from a human rights perspective, the request challenged the extensive economic, social and cultural rights violations perpetrated by the World Bank in partnership with the Nigerian government under the Bank-funded Lagos Drainage and Sanitation Project (LDSP).

SERAC's Request for Inspection followed the Lagos state government's July 1996 announcement that it intended to demolish fifteen slum communities under a World Bank-funded project without making provisions for the compensation or resettlement of the slum dwellers. Under the LDSP pilot project, over 2,000 persons have been forcibly evicted from their homes and businesses in Ijora Badiya and Ijora Oloye, both slum communities in central Lagos.

Specifically, SERAC complained that the LDSP had flagrantly violated the Bank's operational directives and the human rights of residents of the local host communities who were not consulted during the project planning stages, relocated or rehabilitated after the demolitions, or compensated for their real and personal property losses. Following a site visit to the project-affected communities, the inspection panel held that it was "not satisfied that the [Project] Management had fully complied with the [World Bank's] resettlement policy" in so far as it had "failed to provide resettlement and compensation for some affected people."<sup>6</sup>



- ***Remedies including compensation for victims***

Prior to carrying out any evictions, especially those involving large groups, states parties should consult with affected persons, and explore all feasible alternatives for avoiding or minimizing the need to use force. Legal remedies and compensation must be available to affected persons (para. 14).

- ***International agencies and forced evictions***

With regard to development projects financed by international agencies that result in forced evictions, "international agencies should scrupulously avoid involvement in projects . . . which involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account" (para. 18).

## **The CESCR's Review of State Party Reports on the Right to Housing**

While reviewing reports submitted by states parties to the Covenant, the CESCR has affirmed that states have a clear obligation to protect the right to adequate housing. For example, in 1998 it reviewed the report submitted by the Federal Military Government of Nigeria. In response, it "expressed its deep concern about the rising number of homeless women and young girls, who are forced to sleep in the streets where they are vulnerable to rape and other forms of violence"<sup>7</sup> and was generally "appalled at the great number of homeless people."<sup>8</sup> It found that there is an acute housing problem in Nigeria where decent housing is scarce and relatively expensive. The urban poor, especially women and children, are forced to live in make-shift cheap dumps or shelters in appalling and degrading conditions representing both physical and mental illness hazards. Safe, treated pipe-borne water is available to about fifty percent of urban dwellers but only thirty percent of rural inhabitants. By and large only thirty-nine percent of Nigeria's population have adequate access to clean drinking water (para. 27).

The committee further expressed concern regarding the Nigerian government's failure to protect the right to adequate housing. It urged the government to cease forthwith the massive and arbitrary evictions of people from their homes and take such measures as necessary in order to alleviate the plight of those who are subject to arbitrary evictions or are too poor to afford a decent accommodation. In view of the acute shortage of housing, the Government of Nigeria should allocate adequate resources and make sustained efforts to combat this serious situation.<sup>9</sup>

### ***The CESCR and Force Evictions A Case Study from the Dominican Republic***

The Committee for the Defense of Rights of the Barrio (COPADEBA) and Ciudad Alternativa are respectively a popular community-based organization and an NGO who have worked together for more than a decade, confronting planned forced evictions throughout the Dominican Republic (DR) and primarily in the capital, Santo Domingo. Between 1985 and

1995 over 200,000 slum dwellers in the capital faced violent forced eviction in conjunction with urban beautification programs and festivities commemorating the 500th anniversary of Columbus's landing in the country.

Following contacts with international human rights NGOs, such as the Centre on Housing Rights and Evictions (COHRE), these two groups increased their use of international human rights standards as a tool against evictions. In this regard, the two groups were the first national organizations to successfully utilize the CESCR to achieve official condemnation of a state party to the ICESCR. In 1990 the committee for the first time declared that a state party, the DR, had violated article 11 of the Covenant due to its practice of forced evictions. In 1991, the Dominican NGOs were able to persuade the CESCR to issue a warning to the government not to carry out a planned eviction that would have affected over 70,000 dwellers. As a result, the eviction was not carried out and, in 1996, the presidential decree that had originally ordered the eviction was officially repealed by the new government. As a result of the housing rights struggle waged by COPADEBA and Ciudad Alternativa, the community originally scheduled to be evicted now has secure tenure and access to many basic social services.[10](#)

## **Strategies for Ensuring the Enjoyment of the Right to Housing**

### *Legal strategies*

Housing rights are determinate and justiciable. Direct arguments in support of the right to adequate housing can be founded on legally binding provisions contained in international, regional or national laws. (See [Module 22](#) for more discussion of litigation and the justiciability of ESC rights.)

The CESCR has stated that many elements of the right to adequate housing are consistent with domestic legal remedies. It has identified the following areas in which the domestic legal system could play a role in safeguarding the right to housing:

- (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.[11](#)

In addition to seeking enforcement of rights by using standards directly related to the right to housing, cases can be filed using derivative claims. For example, the right to adequate housing may be implied from express guarantees of other rights (e.g., the right to life, privacy of the home, right to family life) that are generally recognized as basic civil and political rights.

Indian courts have used this approach to read the right to adequate housing into cases based on the right to life as guaranteed under article 21 of the Indian Constitution. In the case of *Shanti Star Builders v. Naryan Khimali Tatome et al.*, the Indian Supreme Court held as follows:

Basic needs of man have traditionally been accepted to be free-food, clothing, and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. . . For a human being [the right to shelter] has to be a suitable accommodation which would allow him to grow in every aspect-physical, mental and intellectual. . . . A reasonable residence is an indispensable necessity for fulfilling the constitutional goal in the matter of development of man and should be taken as included in "life" in article 21.<sup>12</sup>

In an earlier decision in the highly celebrated case of *Olga Tellis v. Bombay Municipal Corporation*, the court declared that "eviction of petitioners from their dwellings would result in the deprivation of their livelihood."<sup>13</sup>

Where legislation is inadequate or does not exist at all, NGOs should develop model legislation on the right to housing. Such legislation should be drafted with a view to including all minimum core components of the right with the local context in mind. NGOs should then lobby for the adoption of such legislation.

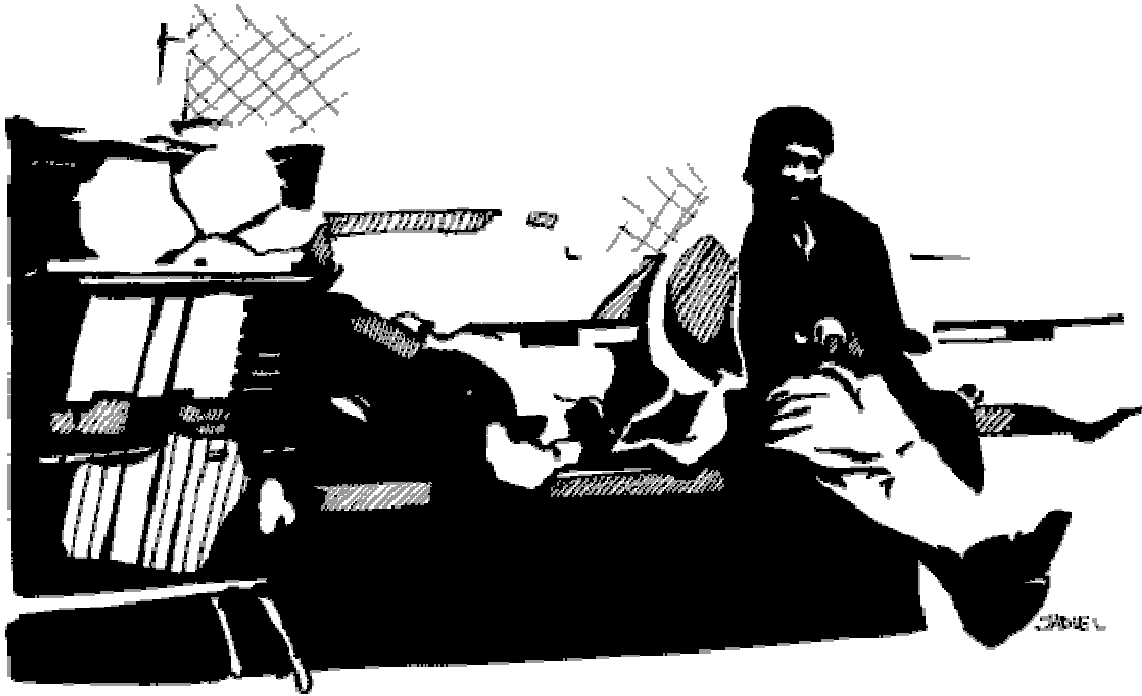
### ***Non-legal strategies***

Legal strategies should be combined with other strategies to ensure the full realization of the right to housing. Effective guarantees of housing rights require consultation, dialogue, negotiation and compromise rather than coercion, force, repression and exclusion. Activists must therefore acquire relevant skills for building consensus around issues relating to the right to housing. Support-based strategies that recognize the role of the informal sector in the creation of housing must be developed and implemented. In the final analysis, the full realization of the right to adequate housing would depend on the extent of awareness and action taken for ensuring its enjoyment.

Other key strategies for action on the right to adequate housing may include:

- Research
- Education
- Monitoring
- Mobilization
- Participation (neighbourhood networks)
- Negotiation
- Constituency building

- Intersectoral collaboration
- Development of model national housing plans
- Budget analysis.



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### [USING MODULE 13 IN A TRAINING PROGRAM](#)

#### NOTES

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1. UN High Commissioner for Human Rights, Fact Sheet No. 21 (1996), *The Human Right to Adequate Housing*, 4.

2. SC Res. 1998/15, UN Doc. E/CN.4/Sub.2/RES/1998/15 (21 Aug. 1998).

3. SC Res. 1998/26, UN Doc. E/CN.4/Sub.2/RES/1998/26 (26 Aug. 1998).

4. CESCR, General Comment 4, *The right to adequate housing (Art. 11, para. 1 of the*

*Covenant*) (Sixth session, 1991), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 53 (1994).

[5.](#) CESCR, General Comment 7, *The right to adequate housing (Art. 11, para. 1 of the Covenant): forced evictions*, UN Doc. E/C.12/1997/4 (1997).

[6.](#) See SERAC@WORK 2, no. 1 (1999).

[7.](#) CESCR, *Concluding observations on Nigeria*, UN Doc. E/C.12/1/Add.23 at para. 23 (13 May 1998).

[8.](#) *Ibid.*, para. 27.

[9.](#) *Ibid.*, para. 42.

[10.](#) This case study was provided by Scott Leckie of the Centre on Housing Rights and Evictions (COHRE).

[11.](#) *Ibid.*

[12.](#) *Shakti Star Builders v. Naryan Khimali Tatome et al.* (1) SC 106, Civil Appeal No. 2598 of 1989 (JT 1990).

[13.](#) *Olga Tellis v. Bombay Municipal Corporation* (3) SCC 545 (1985).

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