

**From Housing Needs to
Housing Rights: An
Analysis of the Right to
Adequate Housing
Under International
Human Rights Law**

SCOTT LECKIE

**For the Human Settlements Programme
International Institute for
Environment and Development**

IIED

**INTERNATIONAL
INSTITUTE FOR
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DEVELOPMENT**

HUMAN SETTLEMENTS PROGRAMME

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Preface and Acknowledgements

The human right to adequate housing has been legally recognized and accepted by the international community since its placement in the Universal Declaration of Human Rights in 1948. For the majority of the 43 years that have passed following the adoption of this historic text however, the notion that equality of access to affordable, secure, safe and healthy housing constitutes a fundamental human right, equal in status to other, more classical human rights, was certainly not the norm. Fortunately, things now appear to be changing for the better.

The transformation of Habitat International Council into Habitat International Coalition (HIC) in 1987, and the subsequent changes HIC have made in the scope of its work since that time, have provided a major thrust in the global movement for housing rights. HIC instigated a Global Campaign for Housing Rights and Against Evictions in 1989, which has since grown in both content and results. The emergence of regional housing rights initiatives such as the Asian Coalition for Housing Rights, along with national housing rights campaigns in India, Belgium, the UK, Canada, Colombia, and other nations, have greatly assisted in placing housing rights firmly on the international agenda. A marked shift within inter-governmental organizations such as the United Nations towards placing greater priority on housing rights concerns is also discernable. For instance, the right to housing forms a central foundation of the UN's Global Strategy for Shelter to the Year 2000. Governments, while perhaps still frightened of the implications of viewing housing as a human right, have slowly begun to more seriously address this issue - at least within the human rights organs of the UN, and in some instances within their own nations.

It is now accepted that governments throughout the world have failed to adopt the policies and legislation necessary to adequately house all of their citizens - in both the South and the North. As much as governments have been seen to be ill-equipped to fulfil housing rights for all, there has been a corresponding recognition of the crucial role played by non-governmental organizations (NGOs) and community based organizations towards the fulfilment of housing rights and the building of viable, participatory and grassroots communities. Yet, while community based organizations and NGOs have broken much new ground in devising practical strategies for the satisfaction of the housing needs of the poorer groups within society in countless ways, emphasis on the legal side of this debate has been and continues to be limited. This is true at all levels of the law, but especially so concerning international legal resources.

This report seeks to provide an introductory and accessible framework for non-lawyers to be used in understanding and grasping the many diverse issues associated with housing rights as they are currently found under international human rights law. It undoubtedly comes as a surprise to many readers that this right is already so firmly and broadly entrenched within the many treaties comprising this legal regime. Alongside any amazement of this legal reality will also come despair as one recognizes the degree to which this right is nothing less than blatantly violated on a daily basis in virtually every nation on earth. Yet, while desperation may emerge, this study aims to provide a variety of possible means of transforming this frustration into a source of empowerment for the hundreds of millions of victims of housing rights violations (such as evictions) by revealing not only where housing rights exist and which governments are bound by law to respect these, but also how these can be enforced and protected.

This report should not by any means be seen as a final statement on the matter; not the least due to the encouraging fact that major developments are underway both internationally and at the national and local levels concerning housing rights. Arguably, more has occurred on the housing rights front during the past three or four years than in the preceding four decades. Governments are now subject to much more discernable obligations to respect, promote and fulfil housing rights than ever before. Some governments have been labelled as violators of housing rights for the first time in legal history. An array of human rights bodies has started viewing housing rights on equal terms to other, more commonly viewed human rights themes such as torture and political killings. Formal legal complaints have been forwarded to human rights bodies by NGOs alleging non-compliance with the housing rights duties of certain countries. Courts are increasingly addressing housing rights themes within the formal judicial setting. A growing amount of the literature on human settlements is also addressing housing as a right.

As encouraging as these and many other developments may be a great deal remains to be accomplished. Indeed, the need for concerted efforts towards the full realization of housing rights has perhaps never been more urgent.

Not only does the number of homeless or inadequately housed persons throughout the world continue to grow almost unabated, but so too do the direct victims of mass and forced evictions, removals, resettlements and demolitions. Unfortunately, the time for taking solace in the mere existence and application of housing rights has not yet arrived - far from it. It is hoped that this report will generate both action and further interest in the potential surrounding the human right to housing so that this still underdeveloped right can ultimately and finally jump from the realm of words into the reality of deeds.

Many people assisted with the preparation of this report, to each of whom I am tremendously grateful. Special thanks to Ceri Hutton of the IYSH Trust and Peter Ashman of the European Human Rights Foundation for providing the financial support necessary to carry out this project.

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Scott Leckie
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ABBREVIATIONS

ACHR	American Convention on Human Rights
ADRD	American Declaration on the Rights and Duties of Man
ACHPR	African Charter on Human and Peoples' Rights
art.	Article
CBO	Community Based Organization
CCPR	International Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of the Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council (UN)
ESC	European Social Charter
HIC	Habitat International Coalition
ILO	International Labour Organization
IYSH	International Year of Shelter for the Homeless
NGO	Non Governmental Organization
NIEO	New International Economic Order
OAS	Organization of American States
OAU	Organization of African States
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCHS	United Nations Centre/Commission on Human Settlements
UNGA	United Nations General Assembly.

Introduction

Adequate housing is crucial to the health and well-being of individuals, families and groups throughout the world. Although it is difficult to be precise as to what constitutes "adequate housing", not least because of different individual, household and community needs and priorities, there is general agreement that housing is one of the fundamental human needs.

As such, a human right to adequate conditions of housing and all that this right entails should be a legal as well as a *de facto* guarantee which receives the consistent attention of governments, non-governmental organizations, lawyers and other concerned parties. However, while extensive literature concerning human settlement issues exists, little has been written or published which deals with housing in terms of rights. Whereas this is true within national contexts, it is even more so at the international level of human rights law.

The first point in the Plan of Action of Limuru Declaration of April 1987, adopted by 45 Third World and 12 international NGOs working in the human settlements field, indicated the necessity of investigating the possibility of "support from international law and from the UN Charter for those being evicted or threatened with eviction". This report signifies a first step in a longer-term process. The approach taken below has sought to be as accessible as possible to NGOs, community based organizations and other working in the human settlements field. Technical and legal terminology has been kept to a minimum. A non-academic and practical approach to the many issues surrounding housing rights has been applied as far as is possible. As will be shown, international law and human rights law can indeed provide support for those being evicted and those threatened with pending forced removal. That is, if the law in question is known, understood and, most importantly, applied.

The value of this legal regime is, to a large degree, contingent upon the extent to which the rights comprising it are understood, how they are legally interpreted, what the contents and corresponding obligations to realize them consist of and other points. Until now, housing rights have been repeatedly affirmed in general terms, yet the understanding of *exactly* what this right legally implies has all too often remained elusive. Consequently, insufficient attention has been given to the various functions which are and could be provided with the utilization of this norm. This paper intends to fill this existing gap in the literature, specifically concerning housing rights at the international level. More importantly, the key objective is to enhance the clarity of this right's implications, with a view to substantiating assurances that housing rights are universally protected and implemented.

Therefore, this paper deals mainly with international human rights law but also looks at various national legal provisions related to questions of housing rights. While recognizing the importance of housing rights in all nations, emphasis will be placed upon the role of the law towards housing questions in the Third World, where the need is clearly the greatest.

It should also be stated initially that this report is not based on the illusion that all housing problems throughout the world can inevitably be solved through reliance on the right to adequate housing. As shelter concerns are directly linked to virtually every facet of government policy, and to society in general, the simple statement "I have and demand my right to housing" will rarely act as a magic formula for effectively confronting and addressing the multitude of dilemmas found in human settlements. Obviously, economic, technical, financial and political constraints and perspectives will influence how housing rights are perceived and acted upon. Yet, however important these parameters may be, all states which possess obligations vis-a-vis this right must, in legal terms, not shy away from their duty to assist in the creation of conditions conducive to the realization of housing rights, in both a passive and active sense. Indeed, this is one of the many interesting legal features of this largely unexplored right, which when examined below will shed more light on the oft-quoted yet little understood phrase, "the right to housing."

Section one provides a brief discussion of the linkages between housing and human rights, as well as providing a preliminary definition of an "adequate house" upon which the remainder of the report is based.

Section two focuses upon the role, status and mechanics of international human rights law.

From Housing Needs To Housing Rights

Here we examine how international human rights law works, where it is applicable with respect to housing issues, who is bound to meet and enforce international legal obligations, who are the beneficiaries of this form of law, and the general means of enforcing international human rights law. In this section, we will also explore questions concerning the nature of economic, social and cultural rights in relation to civil and political rights. An examination of the indivisibility of human rights and a refutation of the view that economic, social and cultural issues such as housing cannot be the subject of human rights will also be covered here.

Section three is a detailed legal analysis of the texts comprising international human rights law which refer expressly or indirectly to the right to housing. In this way, we will be able to discern which states are legally bound to apply housing rights, and to what degree. This section will also look at the existing status of the right to housing under international human rights law, and an in-depth analysis of the ways in which this right and its components are delineated in the law.

Section four explores the area of national law and the right to housing. There will be an examination of various national constitutional sources of housing rights, the ways in which the law is often used as an oppressive tool and how legal resources can be utilized as a form of empowerment leading to greater respect and recognition of the right to housing.

Section five considers on the emerging notion of the "permeability of rights". Here, we will analyze a dozen rights related to the right to housing, with an emphasis on their links to the right to housing and their international formulations and interpretations. Some of these rights include the right to privacy, the right to health, the right to freedom of assembly and association, the right to work, the right to environmental hygiene and so forth. By discussing the degree to which these rights are "permeable" with the right to adequate housing, it will become evident to what extent these rights can be applied towards establishing housing norms.

Section six focuses upon the enforcement and implementation of existing rights to housing and other related rights. The procedures and mandates of the more important monitoring bodies such as the Committee on Economic, Social and Cultural Rights and others will be examined in detail with a view towards assessing their potential role in the implementation of housing rights. Opportunities for individual and group complaints to these monitoring bodies dealing with non-compliance with housing rights norms will also be examined.

Section seven focuses upon the determination of a violation of the right to housing by states legally obliged to fulfil this right. This discussion will be based centrally upon the various levels of obligations assumed by states, to ensure the recognition of housing rights, as a violation in this regard will vary from state to state depending upon the obligations assumed by them.

Section eight offers suggestions to citizen groups and non-governmental organizations (NGOs) on how and where to use the existing law and implementation procedures and mechanisms to support their work, to obtain or guarantee adequate housing for those currently lacking it. Recommendations will be provided as to how the right to an adequate house is best defined, bearing in mind the diversity in individual or family needs and priorities. Finally, there will be suggestions to NGOs concerning their potential role in changing the law and procedures concerned, where necessary and possible, as well as how NGOs can become more involved at the international level.

In section nine we attempt to define the right to housing. This will be based upon the current state of international law, the foundations of housing rights within domestic legal systems and any interpretations of this right by international and regional human rights organs. Additionally, the work of NGOs and community based organizations will also be incorporated within this definition.

Finally, section ten provides conclusions and recommendations based on the preceding sections concerning the most important facets of the underdeveloped area of housing rights. We will include recommendations on the way in which case studies should be prepared and catalogued to provide precedents and guidelines for the development of comparative analyses of domestic laws relating to rights to housing and protection from eviction.

1987, proclaimed by the United Nations (UN) as "The Year of Shelter for the Homeless",

was a year similar to all others in that millions upon millions of people were forced to live without adequate shelter and, in many cases, without any shelter at all. While the IYSH yielded a number of forward looking international and national initiatives, including the United Nations' Global Strategy for Shelter to the Year 2000 (GSS), indications are that far from the problems of evictions, homelessness and inadequate shelter being solved, these global traumas appear to be getting worse. The active approach taken throughout this report is designed to be both relevant to the situations of homelessness and inadequate shelter throughout the world, and accessible to grass-roots organizations and internationally oriented groups concerned with human settlement issues. As such, it is hoped that this report will shed sufficient light on the area of housing rights at the international level so that action can be taken by these groups to realize these legal guarantees.

This report is only a first step in the process, and it will need to be expanded in the future so that a more coherent picture can emerge as to the role of NGOs and others in promoting the rights to housing. Even though a comparative and holistic approach is taken in the report it is impossible to cover every relevant issue in detail. Much research and action will be required in order that a fully comprehensive picture may emerge concerning every relevant aspect of housing rights throughout the world. In fact two projects related to this report include the development of a handbook on the procedures available to vindicate (at least theoretically) housing rights at the universal and regional levels for use by NGOs and community based organizations and another on-going project aimed at delineating precisely the contents of housing rights based on case studies in this area. Yet, prior to this, it is hoped that this report will help initiate a long-term process towards a greater understanding of the human right to adequate housing and a more fruitful utilization of this legal norm geared to the needs of the urban and rural poor throughout the world.

There is a large amount of room to manoeuvre at the international, regional, national and local levels concerning the protection and promotion of housing rights and, as such, community based organizations and NGOs have a monumental role to play. Hopefully, this report will add to the options available to these groups and, in turn, inspire action on behalf of those who need it the most: the one billion persons who live in either inadequate housing or who have none at all.

Section One

Housing and Human Rights

One of the difficulties surrounding virtually all rights considered to be of an economic, social or cultural nature is a lack of clarity in defining these rights. The case of the human right to housing is no exception. Yet, although there are a number of problems in doing this, it is unquestionably a critical prerequisite to fostering a greater understanding of the entitlements contained within the right to housing, as well as the nature of governmental legal obligations in this respect.

Initially, two critical points must be made in defining what we mean by the right to housing. On the one hand, a house or a home must not be exclusively perceived as what it is, but rather as what it does for the person or family who inhabits it. While the physical structure and the amount of space available within a dwelling are important, even more crucial concerns are those relating to cost and location. The home itself must be affordable by those requiring shelter, as well as being located within easy access of sources of employment, health care, educational facilities and so forth.

Secondly, we must consider the incredible diversity of people's needs and preferences regarding housing. This is especially true in terms of the urban and rural poor, for the poorer they are, the less choice they have in the housing market. Government agencies have rarely been efficient providers of shelter for the poor and have rarely based their practices upon the true needs of the disadvantaged sectors in society. The physical structure may have been built to a good standard, but often at a price beyond the range of the poor, badly located in terms of income earning opportunities, or too small to fit the extended family. Moreover, as people's preferences change with age, so too must their housing needs. For instance, consider a single person, in his early twenties who is perfectly content living alone in a small room in the centre of a large city. As he gets older, he marries, and starts a family. At this point in time his small room in the city is no longer appropriate to his needs and preferences; neither for himself nor for his family. He should have other choices available, yet in many cases he will not. This one example shows that those attempting to define housing rights must be careful not to define an "adequate house" in a way which does not take into account each individual's or household's needs.

Thus, while more details will be given below on some of the additional legal questions relating to housing, this report is based upon the crucial fact that housing rights must begin from the angle of what a house does for a particular person or family and consider second, what it actually is. Thus, for the intents and purposes of this report, we will consider a definition of an "adequate house" to be one which meets the following six criteria:

- 1) *Physical structure*: an adequate house must give protection from the elements; must not be damp or unfit for habitation, and must be culturally acceptable.
- 2) *The site on which it is built*: a house must guarantee the physical safety of its occupants. It must be a secure and safe place to be, to live, to raise children (if one has them) and be healthy. Physical safety is particularly important in urban centres. As such, poorer groups are often forced to live on hillsides or land subject to floods or, right beside major highways because this is the only cheap or free land available. The fact that these sites are so dangerous makes them less valuable in terms of real estate and thus the poor have a better chance of avoiding eviction if they legally build a house there.
- 3) *The infrastructure/facilities supplied to it*: an adequate house must have certain facilities essential for health, comfort and nutrition. These include safe and sufficient supplies of water, the provision of household and human waste removal, facilities for washing, cooking and food storage, and heating where needed. It must also include access to certain public services such as emergency life saving services (e.g. fire fighting and ambulances).
- 4) *The cost*: an adequate house must be made available at such a cost that it does not result in the threatened or actual deprivation of other basic needs for all sectors in society.
- 5) *The location*: an adequate house must be in a location which allows access to employment, health services, schools and other social facilities. This is true in cities and rural areas since

the cost in time and public transport to and from places of work is often a major constraint on the budgets of poor households;

- 6) *Legal security of tenure*: an adequate house must have security of tenure. This pertains to owner-occupiers concerning their legal rights as property owners, their right to privacy etc. and to security of tenure for those who "hire" space to live, i.e. the legal rights of renters and tenants. Legal security of tenure must also be applicable to squatters as a means to prevent forced evictions, and security to leave possessions, in terms of protection from landlords, governments and others who might want to expropriate property.

If and when these six basic criteria are not fully implemented in any circumstance, housing rights could be used as a means of coercing/forcing a government to act to guarantee fulfilment in these areas. Of course, these elements of what constitutes an adequate house are not the only components of the right to housing. Other issues include:

- 1) protection against any and all forms of discrimination for minorities, gays and lesbians, refugees, the poor, women, children, people with disabilities, the elderly, single people, any homeless person, travellers, etc. in all aspects of housing;
- 2) the right to public participation in housing matters, and the right to determine one's own destiny;
- 3) preference in housing choices;
- 4) the right to be adequately housed if homeless; and a variety of other concerns.

This report will be based upon the basic criteria detailed above and will subsequently act as a basis from which to view the degree to which the legal contents of the right to housing apply to them. A further attempt will be made in section nine to devise a definition based largely upon these criteria, yet in the context of the relevant human rights norms.

Section Two

From Needs To Rights: The Crucial Leap

A lack of adequate housing is both an affront to the dignity of those without it and a denial of one of the most fundamental human needs. Basic needs are those needs which are essential for a full human life. Education, health, food, clothing and housing could be included in this category. In addition and particularly with the right to housing, many non-material needs must also be included in the analysis such as:

- 1) protection, safety and security;
- 2) a sense of meaningful belonging to a family, clan, community or nation;
- 3) respect, self-esteem, approval, human dignity and self-respect; and
- 4) freedom to allow the fullest development of one's talents and capacities and actualization of the self.¹

1) Eide, Asbjorn, "Human Rights and the Satisfaction of Basic Needs" in Selected Lectures of the 17th Summer Session of the International Institute of Human Rights, Strasbourg, 1986, p. 4.

These two sets of needs, when approached from a holistic perspective reveal the essential basis of this method of perceiving human imperatives.

At the international level, the 1976 World Employment Conference articulated and clarified the objectives of the International Labour Organization's World Employment Programme, which was to relate employment to economic growth, the distribution of the benefits of growth and the eradication of poverty. The conference adopted a basic needs strategy within the programme of action it endorsed. In this context, basic needs included two essential elements. Firstly, certain minimum requirements by a family for private consumption such as adequate food, clothing and shelter, as well as certain household equipment and furniture. And secondly, services, including safe drinking water, sanitation, public transport, health and educational and cultural facilities. The definition of basic needs was also notable for the fact that it recognized the right of people to participate in making decisions which would affect them as a basic need, and so the satisfaction of basic needs should be placed within a broader framework - namely the fulfilment of basic human rights.²

2) *Ibid.* pp. 4-5.

When viewed from the angle of demands for adequate housing, one can see that nearly all of these elements relate rather directly to this basic need. In fact, many of the legal formulations of the right to housing are found alongside or within the context of the right to an adequate standard of living; which inevitably entails requirements such as those just noted. While this perspective has been substantiated by a number of commentators, the crucial link between needs and the means to implement them is the fundamental dilemma at present. For without discerning an entity or entities obliged to fulfil these needs when an individual or family cannot do so alone, only scant progress will be made. Hence, one particularly (or potentially) useful approach aimed at reconciling this disparity is to view basic needs not only as necessary adjuncts to a "life worth living", but also as fundamental human rights. Designating a certain good as a "right" often has the effect of raising the societal status of that good, or in this case a need. For while basic needs by themselves are obviously societal goods par excellence, perceiving and interpreting them as human rights not only enhances the prospect that they may be fulfilled, but also leads to a workable method by which legal obligations to fulfil them can be discerned. One system of law which creates legally binding obligations aimed at protecting, respecting and promoting rights such as those relating to housing, is international human rights law.

At its most basic, this form of law can be described as consisting of several fundamental elements. In order to understand human rights law one must first discern:

- 1) the sources of human rights;
- 2) where human rights law is applicable;
- 3) the beneficiaries of human rights;
- 4) the holder of obligations to fulfil human rights norms; and
- 5) the mechanisms to ensure compliance with international legal obligations.

Once these are understood we will be in a much better position to discuss the ways in which

human rights law can be utilized by NGOs, community based organizations and individuals, in an attempt to improve shelter conditions from a legal angle. While these concepts will be explored in far greater detail below, with respect to certain legal instruments which encapsulate the right to housing, an extremely brief description of this form of law is deemed necessary.

2.1 The Sources of Human Rights

At the international level, rights derive their substance from treaties (which are also known as charters, covenants, conventions, protocols etc). The nature of these instruments is such, that under certain conditions they comprise legal obligations for countries (commonly referred to as "states") under international law. Although other sources of governmental obligations within the body of international human rights law exist, these agreements between states, by which they may consent to be bound, constitute the most important source of legal obligations. Another source of rights which will receive some attention is declarations. These, however, normally pertain more to the intentions of states to carry out certain policies, rather than constituting legal obligations *per se*. Declarations, may, however come to have a binding effect in international law if they become part of what is called "customary law" which is based upon the consistent practice of states and the international community or the international institutions of invoking the provisions of a declaration over time.

2.2 Where Human Rights Law is Applicable

Stemming directly from the existence and sources of human rights law is the question of where and when these rights are applicable. Generally, for a treaty, convention, covenant etc. to become a source of law, several conditions must be satisfied. Firstly, these instruments must have been ratified by a certain number of states prior to their entering into force. Once an international text is adopted, by for instance, the United Nations, states can legally bind themselves to the provisions found in the text. This is accomplished by ratifying the instrument in question. States can additionally sign instruments and thereby declare their intention of eventually ratify them. Normally, it is only through the ratifying of a human rights instrument that a state can assume strict legal obligations to ensure that the rights in the text concerned are protected, respected and enforced. Governments which have ratified treaties are often referred to as "states parties" or "contracting states". Thus, if a state has not ratified a treaty, it cannot be considered to be bound to comply with its provisions unless, of course, the instrument has achieved the status of customary international law. Once a state has ratified a human rights treaty, who are the beneficiaries of these rights?

2.3 The Beneficiaries of Human Rights

A ratified treaty imposes legal obligations upon a government(s) as to what they may or may not do to the individuals over whom they can exercise state power.³ As such, the beneficiaries of human rights are individuals or groups composed of individuals. This emphasis upon persons as opposed to states (who were largely considered to be the only subjects of international law until the termination of the Second World War) has had, and continues to have, a significant impact upon the strict doctrine of national sovereignty in two crucial respects. Firstly, how a state treats its own subjects is now the legitimate concern of international law and therefore of other states. Secondly, there is at present a superior international standard, established by common consent, which may be used for judging the domestic laws and the actual conduct of sovereign states within their own territories and in the exercise of their internal jurisdictions, and which may, therefore, be regarded as ranking in the hierarchy of laws above even national constitutions.⁴ Thus if we consider the right to housing, it is clear that this is an individual (or family, being comprised of individuals) right, which many of the world's states are legally obliged to fulfil.⁵

2.4 The Holder of Obligations to Fulfil Human Rights Norms

As mentioned previously, states are the entities which can possess obligations of a legal nature to guarantee the full realization of human rights. Accordingly, the specific obligations

3) Sieghart, Paul, *The International Law of Human Rights*, Clarendon Press, Oxford, 1983, p. 15.

4) *Ibid.* p. 15.

5) On the area of collective or groups rights under international human rights law see the following examples: Barsh, Russel Lawrence, "Evolving Conceptions of Groups Rights in International Law" in *Transnational Perspectives*, Vol. 13:1, 1987, pp.6-10 and Brownlie, Ian, "The Rights of Peoples in Modern International Law" in *Bulletin of the Australian Society of Legal Philosophy*, Vol. 9:33, June 1985, pp. 104-119, among others.

will depend upon the contents of a human rights instrument as well as any delineation of obligations found within the same document. Some obligations may require a state to immediately implement a right(s), while other duties may oblige a state to implement the rights in question progressively over time. Because an extensive discussion concerning governmental obligations vis-a-vis the right to housing will take place below, suffice it to say that the correlative duties of rights fall primarily upon states and their public authorities.

2.5 The Mechanisms for Supervising and Monitoring Compliance With International Obligations

As states parties to a human rights instrument are legally bound under international law to provide the guarantees found within such an instrument, certain international institutions have been established to monitor the states' compliance. Most of the major human rights texts have created various committees, commissions, courts and other bodies designed to provide some recourse if any state party fails to provide adequate domestic measures or remedies. Sometimes the monitoring effort will focus solely upon considering "states' reports" submitted by states themselves concerning the measures they have taken to implement the rights of a certain instrument. The body in charge can examine and comment upon these reports, and may provide suggestions as to where additional government initiative may be necessary in order to fulfil certain rights. Some bodies are capable of receiving and judging individual complaints (also known as petitions and communications) alleging a violation of a state's obligations under a particular treaty. Moreover, some human rights treaties, especially those focusing upon civil and political rights, provide the opportunity for states parties to instigate inter-state complaints against another state which is seen not to have complied fully with the instrument in question. Additionally, certain human rights organs of the UN, such as the Commission on Human Rights can play a role in urging compliance with international legal obligations of states by adopting resolutions, carrying out on-site investigations in the state concerned, publishing reports documenting human rights abuses in a state and so forth.

All of the available mechanisms entrusted with the aforementioned duties will be examined below, with a view to discerning the role these bodies play with regard to the right to housing (if any), as well as how and to what extent these bodies can be utilized by individuals, community based organizations and NGOs to demand compliance with their rights to adequate shelter. Now that we have sketched the component elements of international human rights law, it is appropriate to examine one important aspect of it. This will then be followed by an in-depth examination of its texts in order to find out more on the right to housing at the international level.

2.6 Economic, Social and Cultural Rights versus Civil and Political Rights

One of the central themes of human rights law is the equality, interdependence or indivisibility of rights. This perspective, although addressed and supported in many of the texts on international human rights law and equally by various international institutions including the UN, remains a point of contention. There are three general foundations to the view that all human rights are not necessarily equal and indivisible. The most prevalent is based upon the recognition of civil and political rights, and economic, social and cultural rights yet, in practice, priority is clearly given to one category at the expense of the other. A second precept maintains that, in order to implement one set of rights, the other set must first be fulfilled before enforcing the second. The most extreme of the three views contending the equality of rights is the focus on the non-binding nature of economic, social and cultural rights as human rights. Each of these perspectives, in addition to diminishing the validity of the interdependence of rights, also undermines any legal hypothesis based upon the right to housing. However, while it is clear that distinctions exist between economic, social and cultural rights on the one hand and civil and political rights on the other, the acceptance of their indivisible nature is arguably a prerequisite for an effective and comprehensive human rights policy. Without the acceptance of this view, rights can be subjugated at the expense of other rights. Additionally, although there are exceptions, it has generally been economic, social and cultural rights which have faced these unfortunate circumstances. Although the situation has improved recently regarding these rights, it will be useful to assess in greater detail the legal foundations of the interdependence of rights and, thereafter, to explore the legal nature of economic, social and cultural rights in general.

2.6.1 The Interdependence of Rights

While implicit to some degree within many international legal texts (which will be discussed in detail below), the first explicit affirmation of the indivisible nature of all human rights is found in the 1968 Proclamation of Teheran, adopted at the International Conference on Human Rights of the United Nations. Clearly indicating the subjugation elsewhere of economically oriented rights, the proclamation stated

“Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development.”

In 1977, when the UN Commission on Human Rights initiated its deliberations on the right to development and the UN General Assembly (UNGA) began considering the New International Economic Order (NIEO) in the context of human rights, a resolution of considerable importance was adopted by the UNGA. This document, (Resolution 32/130), detailed with some precision the notion of interdependence. The resolution contains several broad concepts relating to human rights and affirms the equal nature of rights with the following statement

“(a) All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights; (b) The full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development; and (c) All human rights and fundamental freedoms of the human person and of peoples are inalienable.”⁶

The importance of this resolution is twofold. Firstly, this resolution re-affirmed the theoretical indivisibility of the two categories of rights. And secondly, Resolution 32/130 seeks to place substantially more emphasis upon economic, social and cultural rights than in the past. Even though the two covenants delineating each set of rights, the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR) are the cornerstones of the International Bill of Rights, the CESCR has had great difficulty achieving equal status with the CCPR in terms of recognition and implementation. This resolution, began the process aimed at rectifying this disparity.

Following the adoption of this resolution, many declarations, conventions and additional resolutions have reaffirmed in their texts the indivisibility of rights. For instance, the African Charter on Human and Peoples' Rights of 1981 proclaims that “civil and political rights cannot be disassociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.”⁷ Moreover, the Declaration on the Right to Development, adopted on 4 December 1986 by the UNGA, provides that:

“all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for, and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.”⁸

Several other undertakings by the UN have also enhanced the status of economic, social and cultural legal norms. One key example of this is the creation of a new Committee on Economic, Social and Cultural Rights entrusted with monitoring the CESCR.⁹ When contrasted with the Sessional Working Group of Governmental Experts, the previous body responsible for this task, the nature and mandate of the new committee reveals a real improvement. Furthermore, the continued consideration by the Commission on Human Rights of an agenda item entitled the “Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and

6) UNGA Resolution 32/130, 1977.

7) See the Bangui Charter on Human and Peoples' Rights, adopted 27 June 1981 by the 18th Assembly of Heads of State and Government of the OAU. Entered into force in 1986.

8) Declaration on the Right to Development, UNGA Resolution 41/128, 4 December 1986 by a vote of 146 for, 1 against, with 8 abstentions.

9) See also, UN Doc. E/CN.4/1988/9 of 28 October 1987, report of the Secretary-General on ... (a) Problems related to the right to enjoy an adequate standard of living: the right to development; UN Doc. E/CN.4/AC.39/1988/L.2 of 18 December 1987, Analytical Compilation of comments and views on the implementation of the Declaration on the right to development prepared by the Secretary-General; and UN Doc. E/CN.4/1988/10 of 29 January 1988, Report of the Working Group of Governmental Experts on the Right to Development.

in the CESC, and the study of special problems which the developing countries face in their efforts to achieve these human rights" also indicates the more active approach taken by the UN and its organs concerning these rights. The number of studies and reports carried out by the UN dealing substantially with economic, social and cultural rights is a further indication of its commitment to the indivisibility of rights. Thus, it is quite evident that due to the various initiatives at the international level stressing the interdependence and equality of rights, it would be difficult to legally refute this perspective. Finally, the principle of the oneness of rights largely lays to rest the dubious hypothesis that economic, social and cultural rights are not really law. Less apparent, however, is the actual legal nature of economic, social and cultural rights.

2.6.2 The Legal Nature of Economic, Social and Cultural Rights

Differing perceptions and legal philosophies have created a dichotomy of rights. While the origins of this dichotomy can be traced back a century or more, within the United Nations this began soon after the adoption of the Universal Declaration on Human Rights in 1948.¹⁰ As the Universal Declaration is a central instrument in international human rights law, it was essentially seen as a precursor to one covenant containing each set of rights which would legally bind states which had ratified this instrument. However, one of the first dilemmas was whether or not to include economic, social and cultural rights within the envisioned instrument. The United States and the United Kingdom were the main opponents to the inclusion of these rights, on the basis that they could not be judicially enforced and that they went beyond the rights found in existing national constitutions.¹¹ In 1952, following several years of heated debate, the UNGA decided to include both sets of rights, but in two separate covenants. Both of the covenants were eventually adopted in 1966 and went into force in 1976.¹²

The distinctions between the two categories of rights, despite constant reaffirmation of their indivisibility, have been approached from several angles. Many of these stem from the nature of obligations under each of the covenants, whereas others have been more generally construed.

Under the CCPR, states are under an immediate obligation to comply with its provisions, undertaking "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant..."¹³ In quite different terminology, states which have ratified the CESC undertake "to take steps, individually and through international co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present covenant by all appropriate means, including particularly the adoption of legislative measures".¹⁴

Stemming from these two different, yet equally obligatory provisions, several assumptions have been made to clarify this distinction. Some are as follows:

- 1) under the CESC, states are required to take positive action to realize the rights contained therein, while under the CCPR, the state is only required to abstain from acts interfering with those rights found in the covenant;
- 2) whereas civil and political rights can be implemented immediately, the realization of economic, social and cultural rights will depend entirely on the stage of economic development a particular state has reached; and
- 3) whereas the content of the rights found in the CCPR are clear and precise, the rights contained in the CESC are vague and indeterminate.¹⁵

However, without a great deal of difficulty each of these three arguments can be refuted as their foundations rest more upon ideological concerns than on the equality of rights.

Varying degrees of state intervention are required to realize certain rights. For example, ensuring the free exercise of civil and political rights will often involve significant state intervention in order to establish a system of courts, to train police and other public officials, to provide for free and periodic elections and so on.¹⁶ Conversely, some of the rights enshrined in the CESC, in order to be fully realized, may require that the state abstain from certain activities. This would be the case in some circumstances with the right to food, the freedom

10) Universal Declaration of Human Rights, adopted and proclaimed by UNGA Resolution 217A (III) of 10 December 1948.

11) See Alston, Philip, and Quinn, Gerard, "The Nature and Scope of States Parties' Obligations Under the International Covenant on Economic, Social and Cultural Rights" in *Human Rights Quarterly*, May 1987, Vol. 9:2, p. 170.

12) See the International Covenant on Economic, Social and Cultural Rights (CESC) adopted and opened for signature, ratification and accession by UNGA Resolution 2200A (XXI) of 16 December 1966, entered into force on 3 January 1976. See also the International Covenant on Civil and Political Rights (CCPR) adopted and opened for signature, ratification and accession by UNGA Resolution 2200A (XXI) of 16 December 1966, entered into force on 23 March 1976.

13) CCPR, Article 2(1).

14) CESC, Article 2(1).

15) See, note 11, pp. 159-6 and Van-Hoof, G.J.H., "The Legal Nature of Economic, Social and Cultural Rights: A Rebuttal of Some Traditional Views" in *The Right to Food* (Alston and Tomasevski eds. 1984), pp. 97-110.

16) *Ibid.* van Hoof, p. 102.

17) Not only has the US yet to ratify the CDESCR, but under the Reagan and Bush Administrations the entire notion of economic, social and cultural rights has been subject to total denial. In essence the current US policy in this respect is simply that such rights cannot and do not exist at all; they cannot by their very nature be human rights. No other state possesses similar perceptions concerning this area of law.

18) CDESCR, Article 8.

19) See note 15, Van Hoof, pp. 103-4.

20) The one major exception in this regard is the right to food. On this right see the following: Eide, Asbjorn, "Report on the Right to Adequate Food as a Human Right" submitted by Mr. Asbjorn Eide, Special Rapporteur, UN Doc. E/CN.4/Sub.2/1987/23; Tomasevski, K., *The Right to Food: Guide Through Applicable International Law*, Martinus Nijhoff Publishers, Dordrecht, 1987 and others.

to form trade unions, the right to cultural identity and to a certain degree the right to housing, as will be discussed below. Thus, that there exists no absolute line distinguishing the degree of state intervention required to actualize human rights.

With regard to the immediate versus progressive implementation of rights, present day legal realities also reveal the non-absolute nature of this perspective. For economic, social and cultural rights, their implementation depends far more upon the type of development rather than upon the level of development achieved by a state. Although the US has not ratified the CDESCR, it would be hard to dispute that this wealthy nation could not implement many rights in this category immediately, if policies were to tend more in the direction of the covenant.¹⁷ Moreover, some of the rights found in the CDESCR such as the prohibition of discrimination and those relating to trade unions can be implemented relatively quickly.¹⁸ Finally, the distinctions made concerning the contents of each set of rights are based on the notion that civil and political rights are clearly elaborated and precise. This is far from true, however, as can be seen by reviewing the extent to which a body such as the European Commission on Human Rights has allowed for wide margins of appreciation in their monitoring efforts.¹⁹ It should also be added that while many of the rights existing within the CDESCR can be made more precise only very few attempts have been made to do so.²⁰

What the foregoing analysis has shown is that while there are certainly valid distinctions to be made between the various rights, most of them are based upon incorrect assumptions. This bias is a central reason for the frequently lower status and importance given to economic, social and cultural rights, as compared with civil and political rights, especially in practical terms. Furthermore, it is apparent that the nature of the general obligations relating to all human rights, while differing in some respects, nevertheless legally bind governments to promote, protect, implement and enforce all rights equally. Any emphasis upon one category of rights over another clearly diminishes the crucial interdependence of all rights, as has been frequently proclaimed at all levels of the UN and within other inter-governmental organizations. Most importantly though, the above discussion has shown that despite arguments to the contrary, economic, social and cultural rights are indeed human rights which should be guaranteed to all and on an equal footing with the more classical civil and political rights. While the field of human rights cannot be said to be a science, it is a holistic system composed of a multitude of elements. All of these elements are not only critical for the effective functioning of the rule of law throughout the world but, equally, if any part of the system is excluded from consideration or subjugated in any way, then the entire system suffers.

Section Three

International Law And The Right To Housing

3.1 General United Nations Action

3.1.1 The UN General Assembly (UNGA)

Coverage by the General Assembly of the right to housing has been scarce. Although two UNGA resolutions have dealt with this issue, prior to this no specific measures were taken. However, the UNGA has been instrumental in various other ways relevant to human settlement matters. For instance, in response to the initiative created with the adoption of the Vancouver Declaration on Human Settlements of 1976, this body reviewed the conditions of human settlements in developing countries in 1980. It found that, since the adoption of the declaration, conditions had worsened, particularly in urban areas where the growth of slums and squatter settlements had continued unabated.¹ The General Assembly urged member states to strengthen their policies regarding human settlements and to place special emphasis on the provision of adequate shelter, infrastructure and services to the people living in squatter settlements and slums of urban and rural areas.² In 1982, the UNGA designated 1987 as the International Year of Shelter for the Homeless and has since continued to adopt resolutions concerning the IYSH, as well as annually reviewing and considering the work of the UN Commission on Human Settlements.³

The UNGA has dedicated two important, yet somewhat vague, resolutions to the right to housing. On 4 December 1986, the General Assembly adopted Resolution 41/146 which included, inter alia, a request to the Commission on Human Rights to devote special attention during 1987 to the question of the realization of the human right to adequate shelter. The commission, as noted below, adopted a resolution on the realization of housing rights in response to this request.

During its 42nd Session, the UNGA continued to show increased interest and subsequently adopted a more detailed resolution "the realization of the right to housing". This resolution, adopted on 7 December 1987, is notably the most detailed and far-reaching of any such initiatives by this body on the subject of housing rights. Due to its importance and its recent passage, it is worth quoting the substantive portions in full:

"The General Assembly,

- 1) Expresses its deep concern that millions of people do not enjoy the right to adequate housing;
- 2) 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;
- 3) 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;
- 4) Requests the ECOSOC and its appropriate functional commissions to keep the question of the right to adequate housing under periodic review;
- 5) Decides to consider the question again following its consideration by the Economic Commission and Social Council (ECOSOC)."⁴

Also at its 42nd Session, the UNGA passed several other resolutions relevant to the human right to adequate housing.⁵

Thus, we can observe that this body, composed of representatives from every UN member state, has shown a favourable tendency towards advocating the realization of housing rights. It is probable that the quality of states' reports on the implementation of the goals and objectives of the IYSH, reflecting the measures they have taken for the realization of this right, as requested by the UN Commission on Human Rights, will determine the extent to

1) See *The United Nations and Human Rights*, UN, New York, 1984, p. 108.

2) *Ibid.* p. 108.

3) See UNGA Resolutions 35/76, 37/221 of 20 December 1982 and UN Doc. A/42/378 of 4 August 1987, Development and International Economic Cooperation: Human Settlements, International Year of Shelter for the Homeless, Report of the Secretary General.

4) See UNGA Resolution 42/146 of 7 December 1987.

5) See other relevant resolutions of the 42nd Session of the UNGA such as: 42/102 concerning the indivisibility and interdependence of economic, social, cultural, civil and political rights and 42/160 Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, in which the UNGA strongly condemns the destruction and demolition of Arab houses at section D, 8 (f).

which the UNGA will continue its interest in the right to housing. Although the UNGA cannot be expected to contribute a great deal to many of the issues comprising the right to housing, it is clear that the last several years have been witness to several steps in the right direction.

3.1.2 ECOSOC and the UN Commission on Human Rights.

The Commission on Human Rights is the principal UN body responsible for the promotion of human rights. It consists of 43 member states of the UN, elected by ECOSOC, and meets once a year for six weeks (normally in February and March). Whilst the work of the Commission covers the entire scope of human rights issues, it has been only recently that any specific action has been taken with respect to the right to housing.⁶ In their 1986 and 1987 sessions, the commission adopted two significant resolutions concerning this right. These are important not so much for their legal significance, as for the formal indication of the substantial degree of international consensus surrounding the issue.

In Resolution 1986/36 entitled "Realization of the right to adequate housing", the commission addressed itself to the realization of this right for the first time. In addition to recalling various initiatives taken within the UN concerning housing, and some of the legal instruments in which the right to housing is codified, the commission noted that "the objectives of the IYSH are related to the realization of the economic, social and cultural rights contained in the International Covenant on Economic, Social and Cultural Rights (CESCR) and the Universal Declaration on Human Rights (UDHR), and that the Commission on Human Rights could make an important contribution to the achievement of the objectives of the IYSH...".⁷ Following the establishment of the commission as a useful body vis-a-vis the realization of the right to housing, this resolution provides three substantive points:

"The Commission on Human Rights...

- 1) *Reiterates* the right of all persons to an adequate standard of living for themselves and their families, including adequate housing;
- 2) *Expresses its deep concern* that millions of people do not enjoy the right to housing;
- 3) *Decides* to continue consideration of the realization of the right to housing against the background of the IYSH...at its 43rd (next) Session."

The Commission did just that by adopting Resolution 1987/22. In addition to this document being more lengthy, it also exemplified a renewed commitment by the Commission to the right to housing, as well as providing an impetus to states to designate policies towards this end. The first two substantive points are quoted verbatim from Resolution 1986/36, while the subsequent four points are more action oriented. For example, point three "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 for the observance of the IYSH, *inter alia*, by developing shelter strategies and settlement improvement programmes." Whilst the following point

"Invites all states, in their reports on the implementation of the goals and objectives of the IYSH, to reflect the measures they have taken for the realization of the right to adequate housing." Finally, the resolution concludes with a request that "the Secretary-General give due attention to the question of promoting the right to adequate housing in the information he is to provide to the General Assembly on the realization of the objectives of the IYSH and that he transmit this information to the commission at its 44th Session."⁸

This comparatively forward-looking resolution was adopted by a roll-call vote of forty to none, with only the US and Japan abstaining.⁹ It is difficult to judge to what extent the commission will continue or discontinue its coverage of the right to housing in its future sessions. However, if the 1988 session of the commission is anything to judge by, one should not expect too much. Despite the fact that the 44th Session of the commission took place only two months after the termination of the IYSH, that there had been an encouraging trend in the past few years concerning this right, and that Habitat International Coalition forwarded a detailed request for action to the commission¹⁰, the latter has not only rarely mentioned the issue, but has also decided against any substantive action, deciding only to keep the item on the agenda. While the commission should always be kept in mind as one human rights body capable of acting and responding to issues concerning housing rights, it is also apparent that the Commission is unlikely to carry out any major initiative without strong pressure being

6) For a detailed description of this body, including ways in which NGOs can best utilize this important organ, see Kamminga, Menno and Rodley, Nigel S. "Direct Intervention at the UN: NGO Participation in the Commission on Human Rights and its Sub-Commission" in *Guide to International Human Rights Practice* ed. Hannum, Hurst, pp. 186-199.

7) See resolution 1986/36, adopted at the 54th Meeting, on 12 March 1986 by a roll-call vote of 40 to none, with three abstentions.

8) See resolution 1987/22, adopted at the 54th meeting, on 10 March 1987 by a roll-call vote of 40 to none, with two abstentions.

9) See Human Rights Advocates Newsletter, No. 9, 1987, p. 7. The United States in justifying their abstention, explained that many people in the US choose to be homeless and that the standard of living generally in the US is relatively comfortable.

10) See Annex I.

11) For the full texts of these resolutions see UN Doc. E/1987/INF/5.

12) See UN Doc. A/42/378 for details.

13) See UN Doc. E/CN.4/Sub.2/1987/23, supra note 20, in Section 1 notes, which is exemplary of this newly committed approach.

exerted by NGOs and community based organizations involved with housing rights.

The ECOSOC has also been active recently in the area of housing rights. In their 1987 Session, they adopted two resolutions in this area: Resolution 1987/37 on the International Year of Shelter for the Homeless and Resolution 1987/62 on the realization on the right to adequate housing.¹¹ The first of these is somewhat of a repetition of those resolutions adopted by the commission and the UNGA in that they are positive yet somewhat vague in substantive terms. However, the second of these texts is important for its more substantial approach to the question of housing rights at the international level. While it does not go into detail concerning the definition of housing rights for instance, it does indicate a tentative step in that direction. The final four clauses are interesting and state the following:

"The Economic and Social Council ... 3) 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 for the observance of the IYSH, *inter alia*, by developing shelter strategies and settlement improvement programmes; 4) Invites all states in their reports on the implementation of the goals and objectives of the IYSH, to devote a special section on the national measures and actions they have taken to promote the realization of the right to adequate housing; 5) Decides to appraise, at its first regular session of 1988, the results of efforts to realize the right to adequate housing during IYSH; 6) Invites the General Assembly to pay due attention to the question at its 42nd Session."

The resolution of the 42nd Session of the UNGA was the result of point six of the ECOSOC resolution, whereas the national reports (point four) on the IYSH, summed up in a document by the Secretary-General, do not reveal a consistent pattern of discussion of housing in human rights terms.¹² Within the section called "Goals and Accomplishments: action at the national level", there are no sections solely on the right to housing, but one does find coverage of important political points such as the "enabling approach". Moreover, only a very small percentage of the member states of the UN actually sent reports of any significance.

Because the Commission on Human Rights and its sister organ, the Sub-Commission on the Prevention of Discrimination and for the Protection of Minorities, have become increasingly concerned with the implementation of economic, social and cultural rights in recent years, it is probable that more work will be carried out or sponsored by them on the right to housing provided, of course, that NGO participation within these bodies is significant enough to persuade them and states that action is worthwhile and imperative.¹³ Pragmatically though, financial, political and other constraints will invariably continue to dictate many of the actions of these bodies.

3.2 The UN Charter and the Universal Declaration on Human Rights

Within the UN Charter (the legal instrument which binds UN member states to the common purposes and functions of this organization and which was adopted in 1945) several references are made concerning the general protection of human rights. Most importantly, Article 55 states that "the UN shall promote a) higher standards of living, full employment, and conditions of economic and social progress and development; b) solutions to international economic, social health and related problems...; and c) universal respect for, and observance of, human rights and fundamental freedoms for all..." In Article 56, members of the UN pledge to achieve the principles set forth in Article 55.

As the Charter itself does not contain any specific human rights provisions *per se*, the rights mentioned required elaboration. This was accomplished three years later with the adoption of the Universal Declaration on Human Rights in 1948 (UDHR). It is here that one of the first international codifications of the human right to housing was proclaimed. In the oft-quoted Article 25(1) it is provided that:

"Everyone has the right to a standard of living adequate for the health and well-being of 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 circumstances beyond his control.

This initial formulation of the right to housing is in general terms, but it is clearly intended

to apply to more than the provision of a roof over one's head. "Adequate" must be interpreted in this context to include the social services necessary for a reasonable standard of living. Importantly, this is a right which should be guaranteed where "circumstances beyond his control" have prohibited the individual fulfilling this right for himself.

The legal status of the UDHR under international law is crucial particularly for those states which have yet to ratify both of the covenants which further elaborated the contents of this instrument. Because it is a declaration, it is often referred to as a "common standard of achievement" to which all states should aspire but not be bound to in international law. However, while it may have been an aspiration 40 years ago, it would be difficult to argue today that the UDHR is not part of binding international law. A number of arguments support this view including the fact that the UDHR is an authoritative interpretation of UN Charter provisions and also that it has been repeatedly reaffirmed and cited by the international community and by individual states.¹⁴ Some writers have pointed out that it has acquired the status of *jus cogens* (or binding law) in international law, by reason of the consistent practice of states as well as international institutions of invoking its provisions.¹⁵ According to this view, it now forms part of customary international law and is, therefore, legally binding on all states, notwithstanding their membership within the UN. Additionally, this approach gains credence when it is considered that this instrument is directly applicable to those states whose domestic legal systems automatically incorporate customary international law.¹⁶

Between these two approaches lies a middle way. This perspective argues that the declaration is binding on member states of the UN, not because of its transformation into customary international law, but because these states have expressly accepted these obligations, most of which are derived from the UN Charter. Although there does not yet exist a consensus as to the judicial status of the UDHR, there are unquestionably very solid and substantial grounds for stating that at present it is binding on UN members, and for arguing that it has a place within customary international law, therefore legally binding states to its norms. Thus, with regards to the right to housing as stated in Article 25(1), it is apparent that UN member states at least, and perhaps all states of the world, are legally bound to implement this right. While this point applies to the international community as a whole, its true significance is clearly aimed at those states which have not ratified the CESCR or other instruments which enshrine the right to housing. For those states, the obligations in the UDHR include each of those briefly outlined above. Before turning to an examination of several other important legal instruments, it should be noted that this declaration also contains several other articles potentially relevant to the right to housing. These are, *inter alia*, Articles 22 and 28 which state:

"22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

"28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

3.3 The Vancouver Declaration on Human Settlements

Partly in response to the results of the Stockholm Conference on the Human Environment held in 1972, the UN decided to sponsor a similar conference four years later in Vancouver. This UN initiative, the Vancouver Conference on Human Settlements in 1976, at which representatives from 132 states and numerous NGOs were present, provided the impetus for an important document relating to human rights. The Vancouver Declaration on Human Settlements provides the most far-reaching delineation of legal questions relating to housing, shelter and accompanying services.¹⁷ Because of its status as a declaration, it cannot be considered as a legally binding instrument, and it would be difficult to say that it constitutes an element of customary international law as well. Nevertheless, this unique text does indicate an international consensus concerning human settlement policies, as well as assisting in the clarification of the human right to housing. While it could be difficult to base a legal argument on the right to housing solely upon this instrument, it can act as a strong substantiating basis of this right.

Although this declaration is generally concerned with the broader realm of human settle-

14) Alston, Philip, "International Law and the Right to Food" in *The Right to Food* (eds. Alston and Tomasevski 1984), p. 22.

15) See note 3, Section 2 notes, p. 53.

16) *Ibid.*

17) See UN Doc. A/CONF/70/15 and Leckie, Scott, "The Right to Housing" in SIM Newsletter No. 20, December 1987, pp. 18-19.

ments, there are various clauses relating directly to the basic needs of housing and shelter. For instance, in Paragraph 8 of Section III the right to housing is re-affirmed with the statement that:

"adequate shelter and services are a basic human right which places an obligation upon 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". It adds further that "governments should endeavour to remove all impediments hindering the attainment of these goals."

Once again the question of housing is approached in terms of rights and with governments designated as the main body obliged to implement these.

The central principles of the Vancouver Declaration are elaborated in four respects: quality of life; disadvantaged groups; discrimination; and active measures. Each of these, in a sense, further clarifies both the contents of this right and the levels of duty assumed by states.

The notion of quality of life, as it relates to housing, constitutes a basis for the general principles of this instrument. An example of this is Principle 1 which provides that

"the improvement of the quality of life of human beings is the most important objective of every human settlements policy. These policies must facilitate the rapid and continuous improvement in the quality of life of all people, beginning with the satisfaction of the basic needs of food, shelter, clean water etc."

With this clause, a clear link is drawn between the conditions in human settlements and the qualitative aspects of life so crucial to human dignity. Just as these two areas are brought together by this provision, the latter concept is broadened to include the disadvantaged groups within society. In this way, emphasis is placed upon women, children and the infirm, as well as those expelled or homeless people who have been misplaced by natural or man-made catastrophes, and especially by acts of foreign aggression.

The most important provision concerning discrimination with regard to human settlements is Principle 8. This provision states, that "of special importance is the elimination of social and racial segregation through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities."

Finally, this instrument provides a series of recommendations encouraging states to improve housing conditions in their respective countries. They include "the responsibility of governments to establish human settlement policies leading to a progressive improvement in human well-being". Furthermore, "a human settlement policy must seek a harmonious integration or co-ordination of a wide variety of components including, for example, population growth and distribution, employment, shelter, land use, infrastructure and services, and governments must create mechanisms and institutions to develop and implement such policies". Finally, the last guideline of action states emphatically that "the international community must constantly refer to these principles and, at the same time, seek new and more effective ways to support the self-reliant development of those societies that are struggling to meet the human settlement challenges facing them."

This unique instrument has neither lived up to its expectations nor have many of its standards been implemented. The Vancouver Conference and its subsequent declaration were largely responsible for supporting the creation of the Centre for Human Settlements and was an impetus for the IYSH. However, in concrete terms living conditions in the human settlements of the world have not generally improved and, in many instances, have actually become worse. This does not imply a failure on behalf of this instrument. Rather, it substantiates the point that ultimately the implementation of any rights, in particular those to adequate housing, will be contingent upon the priority given them by the governments concerned. Comparing the status of housing conditions with the provisions of this instrument, or all other legal provisions relating to housing for that matter, clearly reveals that, while the law may be imperfect and may need some changes, it is by and large the lack of initiative by states that continues to inhibit the right to housing from becoming a reality for all the world's inhabitants.¹⁸

18) See Hardy, Jorge E. and Satterthwalte, David, *Shelter, Need and Response: Housing Land and Settlement Policies in Seventeen Third World Nations* John Wiley and Sons, 1981.

3.4 The International Labour Organization (ILO)

The International Labour Organization is one of the most active and successful inter-governmental organizations concerned with the protection and promotion of human rights. It is one of the several specialized agencies of the UN, with its mandate covering areas such as labour, employment, discrimination, freedom of association, occupational safety and so on. One of this organization's more unique attributes is its tripartite structure, composed of governments, employers and trade unions. This pluralistic make-up has enabled the ILO to accomplish a great deal since its inception in 1919 under the Treaty of Versailles. In general terms the ILO has adopted over 170 legally binding conventions on a variety of human rights issues. Moreover, the machinery used by the ILO for implementing its instruments is arguably the best of its kind in the international community. While the majority of their legal doctrines concern various elements of labour law, the rights of indigenous peoples, discrimination and so on, a few of them also deal with components of the human right to housing. These are Recommendation 115 concerning workers' housing and Convention 117 concerning basic aims and standards of social policy. These contain relevant provisions directly and indirectly related to the right to housing and will be discussed in detail below. In addition to these initiatives, the ILO possesses a great deal of technical capability, which, if applied wisely, could contribute greatly towards improving housing conditions worldwide. Thus, in this sub-chapter we will discuss the legal manifestations of the right to housing within the mandate of the ILO, followed by an analysis of the role of the ILO in general housing matters.

19) Recommendation 115 Concerning Workers' Housing, adopted by the Governing Body of the International Labour Office at its 45th Session on 7 June 1961.

20) Swepton, Lee, "Human Rights Complaint Procedures of the International Labour Organization" in *Guide to International Human Rights Practice*, ed. Hannum, Hurst, p. 76.

Recommendation 115 concerning workers' housing is the most comprehensive of the ILO instruments concerned with housing issues.¹⁹ This instrument was adopted in 1961 and due to its status as a recommendation, does not create legally binding obligations for member states. In contrast to conventions which do create such obligations for states which have ratified them, recommendations are intended as guidelines for legislation and practices countries may wish to adopt on certain subjects, and often act as a supplement to conventions.²⁰ Thus, in the preamble of Recommendation 115 it is stated that "each member (of the ILO) should, within the framework of its general social and economic policy, give effect to the ... general principles in such a manner as may be appropriate under national conditions."

This instrument covers the following areas: objectives of national housing policy; the responsibility of public authorities; housing provided by employers; financing; housing standards; measures to promote efficiency in the building industry; house building and employment stabilization; and town, country and regional planning. Some of these themes are expanded upon in the second part of this text and given greater delineation. This recommendation is one of the most detailed international legal instruments concerned with attributes of the right to housing, though it is not binding. However, because this instrument was drafted in 1961, it is outdated in many areas with some of its provisions being wholly inappropriate today.

The preamble of this ILO instrument outlines the background leading up to its adoption and includes the following provision linking the ILO with housing concerns:

"Whereas the Constitution of the ILO provides that the organization shall promote the objects set forth in the Declaration of Philadelphia, which recognizes the solemn obligation of the ILO to further among nations of the world programmes which will achieve the provision of adequate housing."²¹

21) *Ibid.*

After noting that the recommendation is applicable to all workers, it delineates what ought to be the objectives of a national housing policy. One critical objective outlined provides that

"it should be an objective of national 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."²²

22) *Ibid.* Section II (2).

Related to this, it also enshrines the principle that every family should have a separate and self-contained dwelling if it so desires, and that workers' housing should be given a degree of priority which takes into account both the needs and the requirements of balanced economic development, should such housing aims compete directly with other programmes for economic growth and development.²³

23) *Ibid.*, section II(6) and (7).

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Among the responsibilities of public authorities mentioned is the prerogative of setting up a central body which would link all public authorities involved in housing issues. According to the recommendation, the responsibilities of this body would be twofold; 1) to study and assess the needs for workers' housing and related community facilities; and 2) to formulate workers' housing programmes to include measures for slum clearance and the rehousing of slum dwellers. It is evident that the second obligation is no longer an appropriate response to the many "illegal" slums that pervade the urban centres of the developing world. However, at the end of this instrument the question of squatter clearance is again considered. Principle 46 thus proclaims that:

"With a view to combatting slums, the competent authorities, in collaboration, as appropriate, with civic and other organizations concerned, as well as with landlords, home owners and tenants, should take all practicable measures for the rehabilitation of slum areas by means such as renovation and modernization of structures which are suitable for such action and the conservation of buildings of architectural or historical interest. The competent authorities should also take appropriate action to ensure adequate housing accommodation for families which may be temporarily displaced during the period when such rehabilitation is being carried out."

Nonetheless, the currently accepted wisdom concerning squatter and slum policies differs markedly from this clause; a clause which in one way could justify mass forced evictions. Moreover, it does not take into account many of the key issues of today concerning affordability, upgrading versus rehabilitation, financial concerns, enabling strategies, self-help and so on.

Finally, this section of the recommendation concludes by recommending the co-ordination of public and private resources for the construction of housing; that when a continued increase in housebuilding capacity is required, economic development programmes should include measures to provide the necessary resources to carry this out; and that public authorities should assume responsibility for providing directly, or for stimulating the provision of workers' housing on a rental or home ownership basis.

In the sections concerning financing several important points are addressed. One of these states that: "The competent authorities should take such measures as are appropriate to ensure the execution of the accepted programmes of workers' housing by securing a regular and continuous provision of the necessary financial means." In a more specific provision we find that "public authorities should endeavour to ensure that public and private facilities for loans on reasonable terms are available to workers who wish to own or to build their dwellings, and should take such other steps as would facilitate home ownership." From these two measures alone, the degree to which public authorities are seen to be responsible for creating conditions conducive to the realization of the right to housing is quite high.

While the notion of governmental responsibility is set forth in very recognizable terms above, it is also outlined in the context of housing standards; which, in a way, form an important basis for determining some of the content of the right to housing, at least in physical terms. In general terms:

"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".

These standards are uniquely delineated in seven categories and should relate to:

- 1) the minimum space per person or per family as expressed in terms of one or more of the following, due regard being given to the need for rooms of reasonable dimensions and proportions: a) floor area; b) cubic volume; or c) size and number of rooms;
- 2) the supply of safe water in the workers' dwelling in such ample quantities as to provide for all personal and household uses;
- 3) adequate sewage and garbage disposal systems;
- 4) appropriate protection against heat, cold, damp, noise, fire, and disease-carrying animals and, in particular, insects;
- 5) adequate sanitary and washing facilities, ventilation, cooking and storage facilities and natural and artificial lighting;

- 6) a minimum degree of privacy both a) between individual persons within the household; and b) for the members of the household against undue disturbance by external factors;
- 7) suitable separation of rooms devoted to living purposes from quarters for animals."

Of course, it should be recalled that these standards, unlike many of the housing regulations found in developing countries which frequently force slum dwellers and squatters further towards the edge of "illegality", are designed as minimum necessities which should be afforded to all in the quest towards the realization of the right to housing. In a sense, these standards embody an empowering tool of law, rather than play a repressive role, which is so often the case with housing regulations.²⁴

24) See sections 4.2 and 4.3 of this report.

In addition to these physical standards, Recommendation 115 also contains provisions which focus more upon the environmental factors concerning human settlements and which add to the process of determining the contents of the right to housing. Five of these are of sufficient importance to warrant their full delineation. Principles 41-45 provide the following:

"41) Workers' housing should, in so far as is practicable and taking into account available public and private transport facilities, be within easy reach of places of employment, and in close proximity to community facilities, such as schools, shopping centres, recreation areas and facilities for all age groups, religious facilities and medical services, and should be so sited as to form attractive and well laid-out neighbourhoods, including open spaces; 42) In the design of houses and the planning of new communities for workers, every effort should be made to consult those bodies representative of future occupants best able to advise on the most suitable means of meeting their housing environmental needs; 43) The siting of workers' housing should take into consideration the possibility of air pollution from factories, and topographical conditions which may have an important bearing on the disposal of surface run-off and of sewage and other wastes; 44) In the construction of short-life housing it is particularly important to ensure community planning and control over density of occupancy; and 45) It is desirable to adopt the principle of providing in towns and cities for interrelated zones, such as residential, commercial and industrial zones, with a view to ensuring as agreeable an environment as possible for the worker and his family and to minimizing the time spent and risks incurred by workers in going to and from work."

This recommendation, while containing some legal principles pertinent to housing rights overall, exemplifies in general the international perceptions of housing nearly thirty years ago. Many of its clauses, if advocated today would incite outrage rather than acceptance. Therefore the recommendation to revise this instrument by the governing body of the ILO is a welcome sign and one which should be pursued by NGOs and community based organizations.

The relevant provisions concerning housing within the legally binding Convention 117, while important in the overall context of housing rights, is, nevertheless, far less significant in substantive terms than those found in the instrument above.

Convention 117 concerning basic aims and standards of social policy, adopted in 1962, mentions housing in two central frameworks. In the non-binding preamble of the convention it is considered that "all possible steps should be taken by appropriate international, regional and national measures to promote improvement in such fields as public health, housing, nutrition..." In the substantive parts of this instrument, housing is considered in the overall context of the improvement of standards of living and in provisions concerning migrant workers. In the first respect, Article 5 is important. Not only does this provide that "Measures shall be taken to secure for independent producers and wage earners conditions which will give them scope to improve living standards by their own efforts and will ensure the maintenance of minimum standards of living...", but it also substantiates the position of housing in the category of basic needs by providing in Article 5(2) that: "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." Thus, the concept that self-help schemes are crucial for the improvement of standards of living has been legally enshrined. Therefore, it is reasonable to assume that at least under the terms of this binding instrument (although only 29 states have ratified it)²⁵, a legal argument could be forwarded stating that, not recognizing that housing needs might be more appropriately promoted if scope was given to individuals to do so themselves e.g. the enabling approach, might be acting in violation of this convention.

25) As of 1 January 1986, 29 states had ratified this convention. These are: Bahamas; Bolivia, Brazil, Central African Republic, Costa Rica, Ecuador, Ghana, Guinea, Israel, Italy, Jamaica, Jordan, Kuwait, Madagascar, Nicaragua, Niger, Panama, Paraguay, Portugal, Romania, Senegal, Spain, Sudan, Syria, Tunisia, Venezuela, Viet Nam, Zaire and Zambia.

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The provisions of this instrument concerning migrant workers are also of central importance due to the conditions many migrant workers are forced to face when they leave their homes in search of work. An example of this is Article 6 which provides: "Where the circumstances under which workers are employed involve their living away from their homes, the terms and conditions of their employment shall take account of their normal family needs." Also pertinent is Article 9 which obliges states parties to consider that: "Where workers and their families move from low-cost to higher-cost areas, account shall be taken of the increased cost of living resulting from the change." Should these two provisions be interpreted to apply to all migrants, both from the country itself and from other nations, then its application has a potentially large role to play with regard to those seeking employment in the urban centres of developing nations. Hence, not only should such a migrant worker be entitled to visit his or her family on a regular basis, thereby not having to sacrifice any job security he or she might possess, but also these provisions could apply to the requirement of governments to ensure that satisfactory wages are guaranteed.

In addition to the various legal initiatives undertaken by the ILO relating to housing issues, the competence of this organization to play a positive role with respect to improving shelter conditions throughout the world is relatively far-reaching. This can be observed from a number of angles, many of which are included in a resolution adopted by the International Labour Conference at its 73rd Session in 1987. Resolution III concerning the International Year of Shelter for the Homeless and the role of the ILO, outlines the current perspectives taken by the ILO towards the question of housing in general terms. The resolution begins with several considerations concerning the current status of housing problems throughout the world, the causes of these, the crisis in the building industry in many countries, the legal foundations of the right to housing and a welcoming of the IYSH.²⁶ In delineating the role of the ILO in human settlements issues, the resolution stresses "the significant contribution to be made by the ILO, within its specific field of competence, to the implementation of the campaign (of the IYSH), in conformity with the solemn obligation of the organization under the Declaration of Philadelphia (which outlines the mandate of the ILO) to further programmes among the nations of the world to achieve the provision of adequate housing." Emphasis is also laid upon the fact that an effective international campaign for the creation of housing for the homeless will have a significant and stimulating impact on the employment situation in many countries, in view of the labour-intensive character of the construction industry and its multiplier effect in other sectors of the economy.

Within the substantive provisions of the resolution, the ILO invites governments, in consultation with employers' and workers' organizations to do the following: "a) intensify their efforts with a view to achieving the aims and objectives of the IYSH; b) increase significantly allocations for housing and adopt concrete and appropriate programmes to improve housing conditions of the population, especially the poor and disadvantaged and those living below the poverty line, and treat this as a matter of urgent priority; c) pay special attention to the problems arising from families living apart because of workers having to take up employment away from home; d) ensure that, in addition to the quantitative effort involved in the campaign for shelter for the homeless, adequate attention is also given to the qualitative factors, particularly the sanitation and safety aspects of dwellings, and that the utilization of indigenous methods and construction materials is given due consideration; e) encourage employers' and workers' organizations, co-operatives and other relevant organizations, as well as the private sector, to contribute to the promotion of low-cost housing and its upkeep and the restoration of existing housing facilities capable of repair, particularly for the low-income groups, and to assist them in obtaining the necessary facilities needed for this purpose, such as land, credit and material, technical and other help; and f) adopt, where appropriate, effective and equitable measures, including legislation where appropriate, concerning relevant house rents and security of tenure to prevent the exploitation of tenants and protect the rights of all parties concerned."²⁷

Following these recommendations for action to the 150 member states of the ILO, the resolution continues with calls to the Governing Body of the ILO to take several actions. In one instance, the Governing Body is requested "to urge governments of the member states to embark on a vigorous campaign for the creation of adequate and affordable housing as a means of contributing to the fulfilment of the ILO's policies and programmes concerning employment and basic needs."²⁸ In legal terms, the Governing Body is importantly entrusted with including on the agenda of a forthcoming session of the International Labour Conference the revision of Recommendation 115 on workers' housing, which was discussed above.²⁹

26) See Resolution III Concerning the International Year of Shelter for the Homeless and the role of the ILO adopted 23 June 1987 by the International Labour Conference at its 73rd Session.

27) Ibid.

28) Ibid.

29) NGOs involved in the area of human settlements and housing rights should ensure that they are sufficiently represented during the revision process. In doing so, a greater assurance would be provided that the revised instrument would be more appropriately re-oriented as well as providing a basis for transforming this revised instrument into a legally binding convention.

On the more technical side of things, the Governing Body is called upon to instruct the Director-General of the ILO to accomplish certain tasks. Namely, (s)he should:

"i) intensify efforts to help to achieve the aims and objectives of the IYSH by concentrating on aspects relating to employment, training for self-help schemes in community services, whether in urban or rural areas, the formal or informal sectors, the development of employment oriented technology, and the planning and execution of large-scale employment oriented public works programmes, especially housing; ii) strengthen the ILO's technical co-operation activities designed to assist countries in promoting simple building techniques and the production and use of local materials; iii) promote popular participation in the construction and maintenance of workers' housing, especially through housing co-operatives, self-help housing schemes and the promotion of relevant activities of employers and trade unions... remind member states of the need to consult and seek the active co-operation of the representatives of workers' and employers' organizations on the elaboration and implementation of all aspects of housing and human settlement programmes."

Thus, the competence of the ILO in technical and legal terms to act forcefully and effectively in the area of housing rights is indisputable. It is clear from the provisions of this resolution that the ILO has certainly adopted a progressive approach to the question of housing and intends to carry out a number of initiatives aimed at improving housing conditions throughout the world. Moreover, the accessibility of the ILO to NGOs, trade unions and the like is highly commendable and, as such, gives a good opportunity to these groups to continue to participate constructively within this organization. This will hopefully be the case for the extended future.

3.5 Regional Initiatives and Instruments

In addition to the various legal initiatives taken at the international level, several other regionally oriented human rights instruments have been adopted. There are three regional systems of human rights. Within the Americas these are under the auspices of the Organization of American States (OAS); within Africa they are guided by the Organization of African Unity (OAU) and in western Europe they are under the Council of Europe. The value of regional systems of human rights is manifold and stems essentially from the cultural and political histories each of these regions has experienced. As such, the human rights perspective taken within each of these systems is based upon these similarities and is exemplified in the legal texts adopted by them. With reference to the right to housing, these regional systems are arguably more notable for their lack of coverage in this respect. In fact, very few of the central human rights instruments within these regional organizations are directly concerned with housing rights. However, a broad reading of some of the provisions contained within these legal texts could be construed as implying a right to housing without actually stating this in a *de jure* sense. Thus, what follows is a detailed look into the components of the most appropriate regional instruments which relate to the human right to housing in specific and general terms.

3.5.1 The Inter-American System of Human Rights

The human rights protected under the Inter-American System are set forth in three principal documents: the revised OAS Charter, the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights.³⁰ The OAS Charter of 1948, like the UN Charter, establishes few precise rights, yet does contain broad economic, social and cultural standards which could be interpreted to imply the existence of such rights.³¹ In Article 31 of the OAS Charter we find that "To accelerate their economic and social development, in accordance with their own methods and procedures and within the framework of democratic principles and the institutions of the Inter-American System, the member states agree to dedicate every effort to achieve the following basic goals... k) adequate housing for all sectors of the population; and l) urban conditions that offer the opportunity for a healthful, productive and full life..."³² Although these two provisions could be construed to incorporate the right to housing within the OAS, the utilization of the term "goals" probably implies the non-legally binding nature of this provision. However, this does not mean that these provisions could not be used to enhance the claim that housing rights do constitute some type of legal obligation for states in the OAS. In contrast, however, within the two authoritative

30) See Appendix 1.

31) See the OAS Charter of 1948, and as amended in Buenos Aires in 1967.

32) *Ibid.*, and see Articles 34, 35, 40, 42 and 43 which are also relevant to the question of housing rights.

33) See the ADRD, Article XI.

34) *Ibid.*, and see Articles XII, XXI, XXII and XXIII.

35) *Ibid.*

36) See the Inter-American Charter of Social Guarantees, adopted at the Ninth International Conference of the Organization of American States, Bogota 1948.

37) See note 14, p. 27. The implementation clause following the proclamation of, *inter alia*, the right to housing reveals why so little significance has been given to this charter. It provides: "To achieve these purposes the state must sponsor the establishment and operation of popular farms and restaurants and of consumer and credit co-operatives..."

38) See the American Convention on Human Rights, signed 22 November 1969, entered into force 18 July 1978. As of January 1987, the following 20 states had ratified this instrument: Argentina, Barbados, Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, Uruguay and Venezuela.

39) *Ibid.*, Article 26.

40) See respectively Articles 11, 15, 16 and 21.

41) See Preliminary Draft Additional Protocol to the American Convention on Human Rights. OAS Doc. OEA/Ser.P./AG/doc. 1656/83.

42) *Ibid.*

sources of human rights in the OAS, there is express coverage of economic, social and cultural rights.

Article XI of the American Declaration of the Rights and Duties of Man states that "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."³³ Additional rights relating to the right of assembly, association, work and so forth further elaborate the right to housing because of their direct links to this entitlement.³⁴ Similarly, the right to be protected from eviction is formulated to some extent with the provision in Article IX that "Every person has the right to the inviolability of his home."³⁵

Another instrument, now of little significance, is the Inter-American Charter of Social Guarantees, also adopted in 1948. In this document, the states of the OAS (with only the US abstaining) proclaimed that "Workers have the right to share in the equitable distribution of the national well-being, by obtaining the necessary food, clothing and housing at reasonable prices."³⁶ However, the Charter's provisions concerning the actual achievement of its norms are such that it has essentially been ignored over the past 40 years.³⁷ Nevertheless, with the codifications of relevant rights within this charter and the declaration, the question arises of the extent of OAS obligations regarding the implementation of these instruments. Before discussing this, an analysis of the American Convention is necessary, in order to provide a comprehensive picture of the pertinent rights within the OAS.

Member states which have ratified the American Convention are indisputably under a legal obligation to respect the rights and freedoms recognized in this instrument and to ensure for all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.³⁸ Similar to the European Convention on Human Rights and Fundamental Freedoms, the ACHR is almost exclusively concerned with the protection of civil and political rights. The one exception to this is Article 26 which, in general terms, provides that

"The states' parties undertake to adopt measures, both internally and through international co-operation, especially those of a technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social and cultural standards set forth in the Charter of the OAS as amended by the Protocol of Buenos Aires."³⁹

With respect to the permeability of rights, the ACHR also codifies rights relating to privacy, assembly, association and property.⁴⁰ Article 21 concerning the right to property is unique in a limitational sense by stating that "Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society." With this clause in mind, it is foreseeable that a legal argument could be formulated aiming towards a more equitable distribution of land within the Americas. However, in terms of a specific reference to the right to housing the ACHR is left wanting.

For several years the OAS has tried to rectify the lack of coverage within the Inter-American System of economic, social and cultural rights. The main way has been the drafting of an additional protocol on economic, social and cultural rights. In 1982, the General Assembly of the OAS instructed the General Secretariat to prepare a preliminary draft protocol along these lines. This began a process which was essentially suspended after the American Convention on Human Rights chose not to include economic, social and cultural rights, but rather to refer to them in the context of the Charter of the OAS, which is reflected in the terms found in Article 26 of the ACHR. Once an initial draft was drawn up by the Commission and considered by member states of the OAS for comments and recommendations the first preliminary draft was completed. Within this draft the right to housing is mentioned twice. In the context of family life, draft Article 10 provided, that "In order to give the family the protection owed to it by the states, the states shall adopt adequate measures to: ... (iv) Promote the construction and improvement of housing; facilitate purchase by workers, in such a way that they have access to creating a dignified and stable family environment..."⁴¹ Whereas in draft Article 11 it was stated that "The states parties recognize and, as far as they are able, undertake steps to adopt the most suitable measures so that the inhabitants of their respective territories have adequate food, housing and clothing. They undertake, insofar as they are able, to promote measures designed to give effect to the right of all people to an adequate standard of living and to a constant improvement in their living conditions."⁴²

43) See Annual Report of the Inter-American Commission on Human Rights 1985-1986, OAS, Washington D.C. "Chapter 5: Areas in which Further Steps are Needed to Give Effect to the Human Rights Set Forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights"; Additional Protocol to the American Convention on Human Rights, p. 173.

Giving a further boost to the right to housing, the Inter-American Commission on Human Rights in their 1984-1985 Annual Report made various proposals on the preliminary draft and on the future shape of a protocol to the convention. For instance, they stated that "The right to health should be accompanied by the right to enjoy other social conditions closely connected with a healthy life, such as decent housing and a pollution-free environment."⁴³ Thereafter, the Commission itself was entrusted to complete another draft incorporating the further views of states and their own recommendations. Towards this end, a seminar was held on the international protection of economic, social and cultural rights, which brought together distinguished specialists in the field. They also reconsidered the texts of other international instruments of this nature aiming to have the protocol correspond with them. However, and despite these measures, the final draft of the additional protocol completely lacks any mention of the right to housing. Even within their description of the contents of the right to health in the 1986 draft, there is no mention of housing unlike the previous year. This is not to say that a right to housing cannot be implied or assumed from the current text. For there do exist, within the contexts of the right to work, the right to social security, the right to health and the right to a healthy environment, clauses which, if considered along with the others, could amount to at least a tacit recognition of the right to housing. For instance, under Article 12 we find that: "Everyone shall have the right to live in an environment free of pollution and to have access to basic urban services, especially a safe water supply and sewage services." Nevertheless, although the right to housing found in the first draft was considered in the analyses of the Commission concerning the contents of a protocol and that this norm exists within many of the constitutions of OAS member states, this right in substantive terms is absent from the most recent draft. Why this is the case, with such a broad coverage in other international instruments, is bewildering to say the least. The additional protocol, in not including the right to housing, on par with other rights contained therein, forces one to question the concern with which the protocol was drafted; especially in view of the fact that in 1987 more international attention was drawn to the significance of the issue of housing than ever before. Nevertheless, it is clear that member states of the OAS do possess various legal obligations regarding the right to housing as the above noted instruments reveal.

3.5.2 The Primary African System of Human Rights

The human rights treaty within the African system of human rights protection is the Bangul Charter on Human and Peoples' Rights, (ACHPR).⁴⁴ The charter, which only came into force in 1986, is innovative in that it provides for the first time in a binding international instrument the collective rights of peoples to economic, social and cultural development (Art. 22), to national and international peace and security (Art. 23) and to a satisfactory environment favourable to development (Art. 24). Related to this is the relatively small gap between civil and political rights and economic, social and cultural rights. Indeed, both are contained within this instrument although the second category is brief and comparatively vague. While the charter is unique in several respects, it does not expressly provide for a human right to adequate housing. Nor is there mention of the right to an adequate standard of living or the rights to food or clothing which so often accompany the right to housing. In the rapporteur's report on the drafting of the charter there is nothing to indicate that any proposals were made for the inclusion of such rights.⁴⁵ Furthermore although Article 18 enshrines various family rights, unlike other instruments we have seen, it does not include either references to "home" or to the notion of privacy.

There are, however, some rights enshrined in the charter which could be of eventual importance to the right to adequate housing. For instance, Article 14 guarantees the right to property, yet also provides that "It may only be encroached upon in the interest of the community and in accordance with the provisions of appropriate laws." This, of course, resembles Article 21 of the ACHR which also entails the use of expropriation of property in the interests of society. The rights to health, work, assembly, education development and a satisfactory environment, also found within this instrument, could be utilized to the potential benefit of those living in inadequate housing conditions.

Although it is somewhat discouraging that the right to housing was precluded from this important regional instrument, it is possible that the practical considerations of providing such a right made those drafting the instrument and the states of the OAS wary. Given the extreme difficulties, especially economic ones, facing the relatively newly independent states of Africa, the right to housing may have been seen as impossible to fulfil thereby

44) See note 7, Section 2 notes.

45) See note 14, p. 28.

creating false expectations for the populations concerned. Moreover, as with the right to food, the drafters might have been inclined to surmise that including this right and the right to housing would lead to undesirable internal disturbances. Nevertheless, it is possible that the African Commission on Human and Peoples' Rights could interpret certain rights within the charter to include at least the implication that elements of the right to housing exist. Moreover, though it remains surprising that the right to adequate shelter is absent from the charter, it is contained within the UDHR to which, arguably, all African states are legally bound. Even more importantly, the right to housing is found within Article 11(1) of the CESCR which has been ratified by at least 21 African states which therefore have a legal obligation to implement and enforce it. Therefore, the preclusion of this right from the Bangul Charter need not be taken as a wholly pessimistic occurrence, for other legal means are available (or could be made so) enabling a strong case to be made that African States are indeed obliged to respect, promote and implement this fundamental right.

3.5.3 The European System of Human Rights.

This system of human rights protection consists of two essential instruments: the European Convention on Human Rights and Fundamental Freedoms (ECHR) and to a somewhat lesser degree the European Social Charter (ESC). Unquestionably, the ECHR has been and continues to be the one international instrument which has been frequently utilized by individuals and groups, interpreted and analyzed with legal precision by judicial bodies and generally has received more coverage than other instruments aimed to protect human rights. However, it only contains provision of a civil and political nature, and as such, does not mention the right to housing. The ESC, although concerned with social guarantees, does not provide a right to housing *per se* either. Nevertheless, each of these instruments has been interpreted in such a way that the question of housing and elements thereof have been formally considered; because these interpretations have focused upon the permeability of rights, they will be discussed in Section five.

3.6 The International Covenant on Economic, Social and Cultural Rights (CESR)

3.6.1 Background of the Covenant

The International Covenant on Economic, Social and Cultural Rights is the most prominent international human rights instrument dealing with the right to housing. Not only does Article 11(1) refer directly to this right, but this particular codification also exemplifies an elaboration of Article 25 of the UDHR mentioned above. Ninety-two (92) states have ratified the covenant and have therefore formally accepted the legal obligation to achieve the full realization of, *inter alia*, the right to housing.⁴⁶ Stemming from these obligations, several methods have been established under the covenant by pertinent organs to monitor by states parties compliance with these. While each of these points substantiates the claim of pre-eminence of the CESCR regarding the right to housing, its use as a source of law vis-a-vis rights to adequate shelter has rarely been considered, except in very general terms.⁴⁷ Thus, the foregoing analysis will detail the legislative history of Article 11(1), the legal issues surrounding the right to housing and will discuss the methods applied for implementing this right.

3.6.2 The Drafting of Article 11(1)

Article 11(1) provides the following:

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

Prior to reaching this formulation however, seven years were needed by the Commission on Human Rights to draft the CESCR and the CCPR.⁴⁸ From 1947-1954 the commission and

46) See note 12, Section 2 notes.

47) See, for instance, Von Hebel, Herman, "The Implementation of the Right to Housing in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights", *SIM Newsletter*, No. 20, December 1987, pp. 28-41. For a more detailed coverage see the states reports on Articles 10-12 as required under Articles 16 and 17 of the CESCR.

48) See note 14, p. 30.

49) See UN Doc. E/1992/1951, Annex 1 in above, p.30.

50) See Commission on Human Rights, 7th Session (1951) and 8th Session (1952), UN Docs: E/CN.4/SR.222; E/CN.4/SR.223 and E/CN.4/SR.294.

51) *Ibid.*, UN Docs: E/CN.4/SR.222; E/CN.4/SR.223; E/CN.4/SR.294; E/CN.4/SR.295; A/C.3/SR.291; A/C.3/SR.299; A/C.3/SR.369; A/C.3/SR.371 and A/C.3/SR.570.

52) See UN Docs: A/2029; E/CN.4/SR.203; E/CN.4/SR.218; E/CN.4/SR.222; E/CN.4/SR.269 and others.

53) *Ibid.*

54) See UN Doc. E/CN.4/SR.294, pp. 7-10.

55) See, *inter alia* UN Doc. A/3525.

56) See UN Doc. A/C.3/SR.743.

57) The CECSR entered into force on 3 January 1976

three of the specialized agencies, the ILO, UNESCO and the WHO, each played an active role in formulating many of the economic, social and cultural rights which were eventually codified into the CECSR. By 1951 the commission had completed the drafting of a single covenant embracing both civil and political rights and economic, social and cultural rights. This, due to the reasons noted above, was turned into two separate instruments, each of which became the focus for one of the categories of rights. In the 1951 draft the right to housing was mentioned twice. In an opening paragraph to the section concerning economic, social and cultural rights, note was taken of the resolve of states parties "to strive to ensure that every human being shall obtain the food, clothing and shelter essential for his livelihood and well-being."⁴⁹ In addition to this, the 1951 draft also contained a separate article concerned solely with housing rights. When it was becoming obvious that two covenants would emerge from the 1951 version, there was substantial opposition to a separate article on adequate housing (expressed before any references to food or clothing were added). The arguments supporting this viewpoint were made on the grounds that by making a separate provision for housing doubt would be cast on the scope of the then Article 12 which provided for the right of everyone to an adequate standard of living and the continuous improvement of living conditions.⁵⁰ On the other hand, those in support of a separate article argued for instance that, "while the relationship between food, clothing and housing, and the adequate standard of living (referred to in Article 12) was recognized, these three elements are considered of sufficient importance to warrant their specific mention in separate articles."⁵¹ However, as is evident today, the initial argument prevailed and the right to housing was grouped together with the rights to food and clothing. In response to this, several states, in urging the crucial nature of housing as a human right, emphasized the need for a text whereby states parties would undertake all necessary measures, particularly by legislation, to ensure for everyone a dwelling consistent with human dignity, on the grounds that Article 2 was insufficient to cover the needs of the situation.⁵² Supporting this motion, it was pointed out that "all necessary measures" did not imply only the building of houses, but also subsidies, tax exemptions, loans and the provision of materials on favourable terms.⁵³ Opposing this approach, the US, the UK and France mentioned that such a text would rule out any initiative on the part of the community and private enterprise, that the obligations of Article 2 were all that could be reasonably insisted upon in this connection and that states should not be compelled to give priority to housing in their overall implementation of the covenant.⁵⁴ These three arguments also prevailed and in 1954 the Commission presented a finalized draft text of Article 11(1) to the Third Committee of the United Nations General Assembly which closely resembles the article as it now stands.

By the time the draft had reached the Third Committee, the proponents of both a separate article on the right to housing and those favouring a detailed codification of this right began focusing upon more specific issues of the article such as exact terminology and scope. As such, a great deal of discussion arose as to which of the terms "decent" or "adequate" was more suitable to qualify the attributes of housing, food and clothing, and to the advantages and disadvantages of including a reference to the importance of international co-operation in realizing these rights.⁵⁵ After reaching agreement on the term "adequate", the fact that international co-operation was indeed necessary, and after striking down proposals to add a specific implementation clause to Article 11, the text was brought to a vote. The text, as a whole and as amended, was adopted by 48 votes to none, with 16 abstentions.⁵⁶ Finally, in 1966, within the body of the CECSR, Article 11 was adopted by the UNGA. It was not until 1976 however that the covenant actually entered into force.⁵⁷

Before subjecting the article to a more detailed analysis, several points need to be mentioned concerning its drafting. First, despite a variety of arguments proposing a broad interpretation of the right to housing, the narrowest possible delineation of this norm was the final result of the drafting process. Similarly, although also proposed extensively, the right to housing was not judged of sufficient importance to warrant its formulation in a separate article. Even though at the time draft Article 11 was finalized, the right to food and clothing did not possess a single article to themselves either, an additional sub-article, Article 11(2) was eventually added to Article 11 solely concerning an elaboration of the right to food. Whilst the importance of the right to food is beyond question, and as such no criticism can be made of the decision to enshrine this right in both sections of the article, it is difficult to understand why the right to housing was not seen to be of similar significance. At the same time it is clear that when contrasted with the right to housing, a great deal has been written about every possible aspect of the right to food from a legal perspective. Likewise, the right to food has elicited a considerable amount of response from international human rights organs concern-

ing its implementation and so forth. Once again, when contrasted to the right to food, the active measures taken up until now to enforce and implement the right to housing as a human right have lagged far behind. Thus, although the most restrictive approach was taken by the organs responsible for drafting the CDESCR on the right to housing, this should by no means be taken as evidence that sufficient legal grounds do not exist for a valid claim to be made based on the covenant. Rather, the point here is that much effort will be needed in the future to make the ideal of a right to housing into a concrete reality. Thus with the background of Article 11 clear, it is appropriate to consider in more detail the many characteristics of this article from the point of view of housing rights.

3.6.3 Legal Analysis of Article 11(1)

Whilst it is encouraging that a right to housing exists in Article 11 of the CDESCR, without defining its characteristics, its realization will remain difficult. Generally, with all rights it is necessary to establish 1) the content; 2) the beneficiaries or subjects; 3) the object or those responsible to implement the norm; and 4) the mechanisms designed to promote its compliance. Once these have been identified we will be in a far better position to determine the precise role of the right to housing in article 11(1) towards guaranteeing the right to housing for all.

The Content of the Right to Housing

Deriving the content of the right to housing as it is found in the CDESCR is a somewhat difficult task due to the multifarious nature of the norm and the lack of any previous attempts to do so. However, while we shall attempt to define the general right to housing based upon its many manifestations in international law below, by analyzing the exact terminology of Article 11(1), the guidelines for states' reports on this article as is obligatory under the covenant, and some of the general principles enshrined in the CDESCR, a relatively precise, albeit tentative conclusion, can be reached on the contents of this right. Moreover, with the examination of some of the states' reports on Article 11(1) below, the current contents of the right to housing will become more evident.

To begin with, the right to housing is enhanced by the term "adequate", as was noted above. This qualifying term certainly strengthens the norm in that its converse term would necessarily be "inadequate". Thus, initially, the right to housing must be taken in this context to imply not only a right to a dwelling *per se*, but also to a physical structure and surrounding elements which are of such a quality that it could be perceived as adequate. It is clear that this article applies equally to those who are homeless, those who are inadequately housed and, of course, to everyone else.

Secondly, this right is a specific delineation of "the right of everyone to an adequate standard of living for himself and his family". Yet, to a certain degree the contents of this right will depend in part upon how the notion of an adequate standard of living is approached. While perceptions of this may vary widely, under the CDESCR several issues are clear. For example, an adequate standard of living is defined to include at the very least food, clothing and housing. Moreover, and very importantly, these norms are by no means intended to be static concerns dealing with the satisfaction of bare minimum needs. Rather, everyone, in addition to being guaranteed these rights, is also possessed of the right to a continuous improvement in living conditions. Thus the right to housing must be read in conjunction with each of these clauses. In doing so, it is made evident that the breadth of this norm is increased far beyond the mere provision of a roof over one's head.

If the guidelines for states' reports (which are to include legislative and other measures to be implemented by states) on the right to housing are considered, we can observe that this is indeed the case. The newly revised guidelines, which are a major improvement over the standards they replaced, will now require the 97 States parties to the Covenant for the first time to report on a wide number of relevant concerns.⁵⁸ While the guidelines are reproduced in full in appendix V below, some of the more pertinent clauses which can be of use in discerning the contents of the right to housing include:

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

58) See UN Doc. E/C.12/1987/2.

- i) the number of homeless individuals and families;
- ii) the number of individuals and families currently inadequately housed...;
- iv) the number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction...;

... please provide information on the existence of any laws affecting the realization of the right to housing, including:

- i) legislation which gives substance to the right to housing in terms of defining the content of this right...;
- vii) legislation prohibiting any form of eviction...;
- x) legislative measures conferring legal title to those living in the "illegal" sector;
- xi) legislation concerning environmental planning and health in housing and human settlements...;

... please provide information on all other measures taken to fulfil the right to housing, including:

- i) measures taken to encourage "enabling strategies" whereby local community based organizations and the "informal sector" can build housing and related services. Are such organizations free to operate? Do they receive government funding?... (see appendix V.)

The full guidelines, combined with an overall analysis of the coverage of housing rights by the UN Committee on Economic, Social and Cultural Rights, in particular their "general discussion" on housing rights held in 1990, give a good sense of the way in which this right is defined under the Covenant. It is likely that an authoritative legal interpretation of the right to adequate housing as contained in article 11(1) will be carried out by the Committee with the adoption of a "general comment" on this right.

The Beneficiaries of the Right to Housing

Under the terms of Article 11(1) the principal beneficiaries of the right to housing are individuals. As stated, this right is a "right of everyone ... for himself and his family to ... the right to housing ...". This particular phrase is taken directly from Article 25 of the Universal Declaration of Human Rights and is not found anywhere else in the substantive provisions of the covenant.⁵⁹ Thus, with the right under discussion here, although it can generally be taken to apply to individuals, it also has applications to families. As such, some of the difficulties surrounding the point that different individuals and households do not necessarily have similar needs with regard to adequate housing are partially reconciled. This is true at least to the extent that it is clear that all categories of need are covered by Article 11(1).

The question thus arises: if the individual (and family, being composed of individuals) is the principal beneficiary of the right to housing, what is the entitlement guaranteed to him or her? Housing needs vary widely from family to family, city to city, region to region and from nation to nation. Contrary to this apparent diversity however, the circumstances of the individual and their geographical location at any given time will largely determine the nature of their entitlement. Obviously, as needs vary, so too must the nature of the benefit. But, as was shown in the discussion of the contents of this right, the delineation of the rights of workers to housing in ILO Recommendation 115 can assist greatly in discerning the nature of the obligations involved. Once this is accomplished (as will be attempted below), proponents of the right to housing will be in a much better position to urge for and incorporate alterations in laws at the national level into a set of relevant legal norms which reflect and seek to satisfy a state's international legal obligations to promote the realization of everyone to the right to housing.

The Objects of the Rights to Housing

One of the most fundamental tenets of international human rights law is that for every right there exists a corresponding duty or obligation attached to a particular entity or entities. This notion, approached from a more philosophical perspective by Henry Shue, has been devised into a three-tier model which correlates duties to every basic right, for instance to the right to housing. These are: a) duties not to eliminate a person's only means of subsistence - duties to avoid depriving; b) duties to protect people against deprivation of the only available means

59) See note 14, p. 35.

60) *Ibid.*, p. 37.

of subsistence by other people - duties to protect against deprivation; and c) duties to provide for the subsistence of those unable to provide for their own - duties to aid the deprived.⁶⁰ Translating these into legal terms within the provisions of the covenant will assist greatly in determining the actual nature of obligations. Based on the approach taken by Philip Alston and within the covenant itself, there exist four distinguishing categories of duty holders. These would be:

- 1) states in respect to their domestic obligations;
- 2) states in respect of their external duties;
- 3) individuals; and
- 4) the international community.

A State's Domestic Obligations

Although it may be the urban poor who are the true builders of third world cities at present, it is the governments who remain the sole possessors of the necessary resources which would enable substantial improvements to be made in shelter conditions in these cities.⁶¹ As such determining a state's legal obligations in this regard is of critical importance when aiming to produce positive responses from them. First, there will be an examination of the internal obligations of states parties based upon the norms of Article 2(1) of the covenant. Secondly, coverage will be provided aimed at incorporating these broad obligations in the context of the right to housing, as well as utilizing the norms of Article 11(1) towards this end.

Article 2(1) lays down a series of obligations which apply throughout the CDESCR. It provides the following:

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

Because this article is of such importance it will be useful to examine separately three of the phrases contained therein: a) "undertakes to take steps ... by all appropriate means, including particularly the adoption of legislative measures"; b) "to the maximum of its available resources"; and c) "to achieve progressively".

a) "undertakes to take steps ..."

During the period when this element of Article 2 was being formulated various proposals were forwarded in place of the term "to take steps". Among these were "guarantee", "to ensure" and "to pledge themselves".⁶² Yet, each of these was unacceptable to a majority of the drafters. Although the obligation to take steps is indeed less stringent than a guarantee, it does assuredly represent a clear legal principle. According to the Limburg Principles (a set of interpretive principles concerning the implementation of the CDESCR, developed by human rights scholars and representatives of several UN bodies): "All states parties have an obligation to begin immediately to take steps towards full realization of the rights contained in the covenant".⁶³ Related to this "the covenant imposes an immediate and readily identifiable obligation upon states parties."⁶⁴ Furthermore, although the full realization of pertinent rights may be achieved progressively, initiatives towards that end must be carried out within a very short time after a state has assumed obligations under this instrument.

The "appropriate means" which a state could use at the national level, consistent with the nature of the rights, in order to fulfil these duties include legislative, administrative, judicial, economic, social and educational measures. As is evident under the covenant and according to Limburg Principle 18, legislative measures alone are not sufficient to fulfil the obligations assumed under the covenant.⁶⁵ At the same time though, the wording of Article 2 and the "travaux preparatoires" make it clear that legislation is not mandatory and, as such, it is a matter for each state to determine the desirability of this. On the other hand, legislative action would be required in cases where current legislation is in express violation of other obligations found in the CDESCR.

This raises the question of whether the provision of judicial remedies could be considered to be an indispensable element of the obligations found in Article 2(1); especially if a state adopted appropriate legislative norms. Although this was proposed during the drafting of the

61) See, *inter alia*, Hardoy, J. and Satterthwaite, D., "Shelter, Infrastructure and Services in Third World Cities" in *Habitat International*, Vol 10, No. 3, 1986, pp. 244-284 and World Commission on Environment and Development, *Our Common Future*, WCED, Oxford University Press, 1987.

62) See note 11, section 2 notes, p. 165.

63) See Principle 16 of the Limburg Principles, reprinted in UN Doc. E/CN.4/1987/17, Annex.

64) See note 11, Section 2 notes, p. 166.

65) Limburg Principle 18 provides: "Legislative measures alone are not sufficient to fulfil the obligations of the covenant. It should be noted, however, that Article 2(1) would often require legislative action to be taken, in cases where existing legislation is in violation of the obligations assumed under the covenant."

66) See UN Doc. E/CN.4/L.65/Rev.1 (1952).

67) See note 11, Section 2 notes, p. 171.

68) *Ibid.*

covenant, it was swiftly defeated.⁶⁶ Therefore, judicial remedies cannot be considered to be required under Article 2(1) as they are under many other human rights instruments, especially those concerning civil and political rights. Despite this though, several ratifying states have indicated in their states reports that remedies are available for many of the rights found in the CESCR. Moreover, as we shall see below, increasing numbers of national constitutions have enshrined various economic, social and cultural rights, including the right to housing. Although the right to housing may, in some cases, not be able to be invoked before a court of law by an individual claiming to be a victim of its non-fulfilment, many of these constitutions possess a clause providing for the legislature to be bound by the rights in question.⁶⁷ On a more optimistic note, the norms found in the covenant, even if not subject to a judicial complaint process, can play a significant role in the adoption and interpretation of national laws. For instance, it is generally accepted that where meanings of domestic law are unclear, it should be interpreted in such a way as to be consistent with any relevant international obligation assumed by that state.⁶⁸ This, of course, strengthens the needs for greater coverage of the issue of housing rights at the international level.

Several points are therefore clear. First, states must begin immediately to implement the covenant once they become states parties. Secondly, legislation is neither required under the CESCR, nor when it does exist is it sufficient to fulfil a state's obligations under this instrument. Lastly, although judicial remedies are not necessarily required under the terms of Article 2(1), there is a distinct movement towards including economic, social and cultural rights within national constitutions which, in some cases, can act as the basis of a legal remedy.

b) *'to the maximum of its available resources'*.

Four of the Limburg Principles provide excellent coverage of the actual meaning of this phrase. They are especially pertinent to the right to housing because of its significance as a basic need along with food, clothing etc. These points state:

- “25) States are obliged, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all.
- 26) 'Its available resources' refers to both the resources within a state and to those available from the international community through international co-operation and assistance.
- 27) In determining whether adequate measures have been taken for the realization of the rights recognized in the covenant attention shall be paid to equitable and effective use of and access to the available resources.
- 28) In the use of the available resources due priority shall be given to the realization of rights recognized in the covenant, mindful of the need to assure everyone the satisfaction of subsistence requirements as well as the provision of essential services.”

Due to the very nature of many economic, social and cultural rights, the phrase “to the maximum of available resources” has great pertinence. Furthermore, because the status of a nation's economy will largely determine the level to which this phrase can be applied, a large degree of discretion is given to states in this regard. This, however, due to the extreme disparity of available resources between states, however cannot be entirely open-ended as this would lead quickly to the nullification of the conditions required under the covenant. Nevertheless, few attempts have been made in a legal context aimed at determining the precise meaning of this provision. A proposal made during the first session of the Committee on Economic, Social and Cultural Rights, if finally accepted, will go some way towards reconciling this state of affairs. This proposal envisages the inclusion within states' reports of an obligation for governments to “identify benchmarks or standards which they consider to be the established minimum requirement in their country for the realization of each of the rights recognized in the covenant”.⁶⁹ Not only would this make reporting easier, but it would also act as a measurement against which the current situation in a country (related to the right to housing, for instance) could be compared. Furthermore, because “measures” must be translated to mean more than solely budgetary allocations, such an approach should be favoured.

Also concerning the degree of a state's own discretion in this regard, it must be emphasized that this is, and will be in the future, far from absolute. A brief glance at the preparatory work on Article 2(1) substantiates this point. For instance it has been stated that “in accommodating the text to the changing realities of economic circumstances, the framers did not thereby intend to let states arbitrarily and artificially determine for themselves the level of commit-

69) See Aiston, Philip, and Simma Bruno., "First Session of the UN Committee on Economic, Social and Cultural Rights" in the *American Journal of International Law*, Vol. 81, 1987, p. 750.

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70) See note 11, section 2 notes, p. 179.

ment required by the covenant⁷⁰. Hence, the international body responsible for monitoring the covenant is clearly entitled to scrutinize states on this matter. Indeed states should be formally requested, if not required, to allocate specific benchmarks indicating that consideration has been given to the possible resources available to satisfy those rights they are obliged to promote and fulfil. In doing so, it would make the task of determining the appropriateness of a state's policy concerning the right to housing far easier. It would also provide an opportunity to indicate ways by which a government might more appropriately allocate funds and resources towards realizing the right under discussion.

c) *"to achieve progressively"*.

The definition given to this clause will in turn largely determine the nature of a state's domestic obligations. The central concern here is whether it entitles a state to postpone the fulfilment of certain rights due to, amongst other things, a lack of adequate resources? This certainly does not appear to be the case according to the drafters of Article 2(1).⁷¹ This perspective is given sustenance within several of the Limburg Principles, which are so clear they warrant full coverage. They express that:

71) *Ibid.*, pp. 172-179.

- 21) The obligation 'to achieve progressively the full realization of the rights' requires states parties to move as expeditiously as possible towards the realization of these rights. Under no circumstances shall this be interpreted as implying for states the right to defer indefinitely efforts to ensure full realization. On the contrary all states parties have the obligation to begin immediately to take steps to fulfil their obligations under the covenant.
- 22) Some obligations under the covenant require immediate implementation in full by all states parties, such as the prohibition of discrimination in Article 2(2) of the covenant.
- 23) The obligation of progressive achievement exists independently of the increase in resources; it requires effective uses of existing resources available.
- 24) Progressive implementation can be affected not only by increasing resources, but also by the development of societal resources necessary for the realization by everyone of the rights recognized under the covenant."

In addition to these obligations, two other elements of Article 2 are also concerned with this area of the law as outlined by the covenant. Article 2(2) enshrines the critical guarantee of equality and non-discrimination. It states:

"The states parties to the present covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

This guarantee pervades the entire CESCR and subsequently the right to housing. Thus, on no grounds whatsoever can any discrimination take place on any aspect related to the state's obligations to ensure this right. An interesting question to consider would be: If the central reason for evictions of slum and squatter settlements is their status as illegals without the possibility of owning the property they have inhabited, is it possible to argue in a legal context that once evicted, those removed could argue that their rights have been violated not only under Article 11(1), but also under the non-discrimination clause of Article 2(2). No authoritative answer can be given however, the non-discrimination clauses of this instrument must always be kept in mind during any consideration of questions related to housing rights.⁷² Moreover, it must be stated that in contrast to many of the rights of the covenant, this clause requires immediate implementation. In general terms, Klerk has pointed out: "Article 2(2) of the CESCR forbids only those distinctions for which no objective or reasonable justification can be found and where no reasonable proportionality exists between the means employed and the aim sought to be realized."⁷³ Finally, Article 2(3) uniquely provides that "developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present covenant to non-nationals."

72) See Klerk, Yvonne, "Working Paper on Article 2(2) and Article 3 of the International Covenant on Economic, Social and Cultural Rights" in *Human Rights Quarterly*, May 1987, Vol. 9, No. 2, pp. 250-273.

73) *Ibid.* p. 267.

Thus now that a coherent image has emerged regarding the domestic obligations of states parties to the covenant, how can these be interpreted within the international context of Article 11(1) and the right to housing?

74) Article 55: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a) higher standards of living, full employment and conditions of economic and social progress and development; b) solutions to international economic, social, health and related problems; and international cultural and educational co-operation; and c) universal respect for, and observance of, human rights and fundamental freedoms for all without discrimination as to race, sex, language or religion."

Article 56: "All member states pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55."

Article 28 of the Universal Declaration provides: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

75) For a discussion of the links between the NIEO and human rights see the following: "The New International Economic Order and the Promotion of Human Rights, Study prepared by Raul Ferrero, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/1983/24/Rev.1.

76) *Ibid.*, pp. 27-33.

77) See Alston, Philip, "Out of the Abyss: The Challenges Confronting the New Committee on Economic, Social and Cultural Rights" in *Human Rights Quarterly*, August 1987, Vol. 9, No.3.

78) See Limburg Principle 31.

79) See Limburg Principle 32.

80) See note 11, Section 2 notes, p. 192.

81) See note 14, p. 41.

82) See note 17, Leckie, p. 14.

A State's External Obligations.

The obligations of states beyond the domestic realm with reference to the right to housing are delineated in Articles 2(1) and 11(1). Under the first of these, as noted above, "states undertake to take steps ... through international assistance and co-operation towards the realization of the rights found in the covenant". This obligation is closely linked to the international requirements found in Articles 55 and 56 of the UN Charter and within Article 28 of the UDHR.⁷⁴ Besides being crucial for the covenant in general, the implication of these obligations are also of considerable importance for the realization of the New International Economic Order (NIEO).⁷⁵ A favourable interpretation of these duties would greatly validate the NIEO because of the implied link to human rights standards.⁷⁶ Moreover, it should be made clear that obligations in this respect must be interpreted to include those implied in the term "to the maximum of available resources", which is to be interpreted to include both resources available from internal and external (international) sources.⁷⁷ According to the Limburg Principles, Article 2(1) can be interpreted to entail that states shall co-operate with one another to promote international social, economic and cultural projects, in particular the economic growth of developing countries, free from discrimination based on differences in their political, economic and social systems.⁷⁸ Furthermore, "states parties shall take steps by international means to assist and co-operate in the realization of the rights recognized in the covenant".⁷⁹ Without considering the plethora of arguments on both sides concerning the actual legal obligation that Article 2(1) imposes in international terms, it is possible to state initially that states are likely to accept a greater level of international obligations in practice than they will ever accept in writing.⁸⁰

While this may be true, if Article 2(1) is considered in conjunction with the obligations imposed in Article 11(1), any legal obligations implied by these measures become more evident. Distinguishing these are critical, because no other Article in the CESCR emphasizes the notion of the "essential importance of international co-operation based on free consent" in realizing the rights contained in this article. In interpreting the contents of this phrase, Alston has commented that the terms "essential importance" and particularly "free consent" should be taken as meaning that while an obligation to international co-operation exists, the form such co-operation will take is to be determined in accordance with the free consent of the state concerned.⁸¹ Thus, if this notion is strictly followed by states acting internationally, the problem of "imposed" development might decrease. It would also enhance the prospects of the ideals of popular participation and active citizen involvement in human settlements and housing policy and practice of taking on new dimensions.

The notion of international co-operation is also to be covered by states in their reports on their measures for implementing the CESCR. However, while the guidelines for these reports request that states include information on this, the responses from states range from non-coverage to reasonably acceptable. While this state of affairs can be partially blamed upon the rather vague guideline (information on the use of scientific and technical knowledge and international co-operation for developing and improving construction, including safety measures against earthquakes, floods and other natural hazards), the responsibility for the generally poor quality of reports rests largely with the states themselves, and to a certain degree, the monitoring body involved. A look through 25 of these reports revealed that of these, 19 did not include coverage of their participation in international co-operation relating to the realization of housing rights. Several reports noted the participation of a state in international organizations concerned with housing issues, yet was approached from very general angles, and only a few reports could be classified as acceptable. Undoubtedly, most states are forced to grapple, albeit often unsuccessfully, with their own internal housing problems and, as such, the role that they could play in enhancing international co-operation is greatly curtailed. Additionally, as with many questions relating to global development, the richer states are seen as those possessed of the resources necessary to lead such co-operation. However, the vast majority of reports from the 'developed' countries either mention nothing at all or do so in highly generalized terms. This is discouraging in itself, but even more so when it is considered that only one-twentieth of all aid has gone towards improving shelter conditions.⁸²

Overall, the inadequacies of states reports vis-a-vis international co-operation measures typify the problems of this form of monitoring compliance with the obligations assumed under international instruments of this nature. While this in itself is negative, when considered in the context of legal obligations relevant to the right to housing it takes on even greater proportions. For, it appears, the duty of states to co-operate internationally to

implement the right to housing is rarely seen as a legal priority. This is not to say that initiatives such as the IYSH will not yield improved conditions in human settlements throughout the world. Rather, that from a legal perspective, states continue to find it difficult to formally accept (and carry out) legal obligations towards fulfilling the right to housing or to the provision of aid aimed in that direction to other countries. In spite of this several duties do exist which states would be very hard pressed to deny in this respect. For example, legally speaking, it would be highly dubious if a state were to provide aid, loans or grants to another state which intended to utilize these funds to evict squatters forcibly or to carry out any actions which would amount to a violation of the covenant. In short, states parties to the CECSR have a duty not to contribute to a violation of the covenant in another state party and to ensure that another state party is not without very good reason (the proven lack of available resources, for example) for depriving individuals of their legal right to housing.

Individual Obligations.

The question of whether individuals have a personal duty to contribute to the realization of human rights is one which inevitably provokes debate. Article 29(1) of the UDHR provides that "Everyone has duties to the community in which alone the free and full development of his personality is possible" while individual duties are also outlined within the AfCHPR. Whereas no comparable provisions exist within the covenant, several points are clear concerning individual duty. In terms of international human rights laws the individual does, according to the covenant, have a duty to strive for the promotion and observance of the right to housing, which is owed both to other individuals and to the community to which he or she belongs.⁸³ These could include the duty not to possess unutilized land, property or housing units all with housing potential, while a large proportion of society is inadequately housed; the duty not to allow land to remain empty with speculative hopes of increasing its value; duties not to speculate in general and many others. The various obligations of landlords would also come under this duty and an important area of future research on the right to housing could focus on the extent of individual obligations in this regard. In practical terms, as stated by Alston, "states parties to the CECSR are not only entitled, but are required, to give careful consideration to measures designed to promote the observance, on the part of individuals, of their relevant duties" with respect to the right to housing.⁸⁴

83) *Ibid.*

84) See note 77.

Duties of the International Community.

In addition to the legal responsibilities of states and individual citizens in the arena of housing rights, the international community must also comply with a series of obligations, although these are less clearly defined. These bodies would include international and inter-governmental organizations like the UN, and the UNCHS, international financial bodies such as the International Monetary Fund (IMF) and the World Bank, and also multi-national corporations (MNCs).

Some of the general obligations vis-a-vis the fulfilment of housing rights relevant to these bodies are based on law while others are less strong in legal terms but more comprehensive in socio-political terms. Clearly, at present, international and inter-governmental organizations possess a variety of legally based obligations pertinent to housing. Among these are:

- 1) Duties not to force a country, through policies adopted by them, to abrogate and/or violate their housing rights obligations.
- 2) Duties to give coverage at all policy levels to housing rights when and where appropriate and then not to ignore their existence or significance.
- 3) Duties to provide financial and other assistance if natural or man-made disasters destroy or affect housing/human settlements.
- 4) Duties not to allow the adoption or sanctioning of legal instruments which have the intention or actual effect of denigrating housing rights.
- 5) Duties not to tolerate military activities of any kind which result in the denial and deprivation of housing rights.
- 6) Duties to provide shelter/housing to refugees fleeing droughts, war, famine etc. (this especially applies to the UN High Commission for Refugees (UNCHR) and to other bodies).

While these and other duties are apparent, those affecting multi-national corporations and finance agencies are less well defined, although it is frequently the policies of these

85) See, for instance, George, Susan. *A Fate Worse Than Debt*, Pelican Books, 1988.

institutions which directly and indirectly lead to massive deprivation of adequate housing.⁸⁵ Indeed, it is only within the past several years that the human rights bodies of the UN and the international legal community as a whole have begun to focus on this issue. While too many things remain unclear about their legal or quasi-legal duties any activities, policy decisions, loan agreements and so on must take seriously the housing rights of those affected and must not assist in any way in the violation or forced non-compliance with these rights. This is, of course, much easier said than done.

This section has revealed the rather extensive coverage of the right to housing under international human rights law. As evidenced, it is assuredly an individual right and one which is applicable throughout the world. While the importance of these sources of the law are critical, the most important element of any legal system, and especially human rights, is the process leading towards their eventual realization and fulfilment. Without such endeavours, these guarantees will remain solely aspirations and not concrete realities. Thus, while the various codifications of the right to housing must be kept in mind, the following sections will focus more upon how these rights can be implemented and pursued at all levels. Unquestionably, these areas of legal enforcement are the most difficult aspects of the law to utilize, for often the implementation of rights is a very different matter in the eyes of the state when compared with their tacit recognition of such rights. As such, the next section will focus upon national law and its pertinence to housing rights, followed by an in-depth discussion of the various methods and groups which can be used to obtain greater respect for these vital human needs.

Section Four

The Pertinence of National Law to the Right to Housing

4.1 General Issues

The general perception of the law by the vast majority of those inadequately housed in the Third World is negative; it is seen as a tool of repression and not as a means of empowerment. General experience with legal questions encourages the viewpoint that the law is almost invariably used to maintain unequal social relations and patterns of development resulting in impoverishment, deprivation of the fulfilment of their basic needs and political powerlessness.¹ Moreover, municipal laws are often utilized to control access to vital resources or to impose destructive relations, approving of those with and condemning those without opportunity. In the eyes of those forced to live in wholly inadequate conditions, and therefore who are often forced by circumstance to live in "illegal" settlements and to work outside of legal regulations, the positive resources that could be offered by the law remain unseen. To them, the law is seen only as a duty to fulfil and not as something which also provides individual rights. Thus, the protective and empowering role of the law in improving housing conditions is all too often ignored by those who are adversely affected and by the government. Unquestionably, a functioning society must possess laws comprised of both rights and duties; indeed, that is the essence of human rights. Thus, the task confronting societies in this respect is not to condemn either of these two factors, but rather to try and reconcile them. Given the negative perceptions of the law by many urban dwellers throughout the Third World, this section will explore the qualities of the law which can empower, as well as the potential for repealing or reforming those legal provisions which are so often used to their detriment.

1) See Diaz, Clarence and Paul, James., "Developing the Human Right to Food as a Legal Resource for the Rural Poor: Some Strategies for NGOs" in *The Right to Food* (eds. Alston and Tomseviski 1984) p. 203.

4.2 The Law as Oppressor

Hardoy and Satterthwaite have quite succinctly pointed out the essence of how the law is utilized and perceived as a force of oppression. They state that:

"inevitably, most people have little faith in laws. Quite possibly many do not even know that laws other than those which touch them exist. If inappropriate laws are applied, low-income groups try simply to ignore them or try to co-exist with them as far as possible living by their own systems of values and their own codes. There is something fundamentally wrong with a law if it is being transgressed so often, especially when most of the transgressors belong to low-income households, and when they can survive only by transgressing the laws".²

2) See Hardoy, J. and Satterthwaite, D. "The Legal and the Illegal City" in *Shelter, Settlement and Development*, (ed. Lloyd Rodwin 1987) pp. 304-333.

These points are representative of the nature of the problem.

The urban poor are constantly faced with laws which do little or nothing to assist them in their quest for improved living conditions. They are consistently confronted with their societal status as "illegal" dwellers and, indeed, it has been stated that frequently their entire life is one of long illegality.³ McAuslan has identified five main areas in which the laws present in most developing nations act solely as oppressive tools against those whose rights to housing have yet to be fulfilled. These are:

3) See McAuslan P., *Urban Land and Shelter for the Poor*, Earthscan and the International Institute for Environment and Development, London, 1985, p. 114.

- "1) The urban poor have no legal ownership or tenancy of their home or do not have the legal documents to prove it.
- 2) The location of and the structure of their homes break planning and building laws.
- 3) The services they obtain may be illegal: tapped electricity or water, unlicensed taxis or buses, unlawful medical services, unregistered money-lending, unlicensed drinking premises etc.
- 4) The work they can find may also be illegal: factories which disregard health and safety legislation, street and market trading without licenses etc.
- 5) Their children are unregistered at birth, do not go to school regularly and start work too young."⁴

4) *Ibid.*, p. 114.

The Pertinence of National Law to the Right to Housing

These layers of illegality which cover nearly every aspect of the lives of the urban poor exclude the use of law as a tool of liberation. As such, it is not surprising that so little use has been made of those laws which can protect and empower that sector of society which is inadequately housed.

While the urban and rural poor are forced to find creative ways of coping with their status as law breakers, various other legal provisions and perspectives may compound their already dubious position. For instance, both civil and common law systems left as colonial legacies in many developing states further exacerbate the negative practices based upon these forms of law. Both of these legal systems define the rights of land ownership in strict terms. Civil law believes in the outright ownership of land (and not rights to land) and it has therefore been difficult for countries whose legal systems are based on this form of law to accept either the concept of limited rights to land or the power of the state to apply non-absolutist views to rights in the land.⁵ Paradoxically though, the unwillingness to intercede in legal questions relating to land, has made it less difficult for states to concede legal tenure to squatters because harsh measures against this may in fact violate the human rights of those inhabiting the land.⁶ On the other hand, common law systems provide a more limited view of land in terms of restricted ownership and rights to the land, thereby providing easier access by the state over the content of land tenure. Both of these legal perspectives and other legal viewpoints, rarely enable an appropriate perspective of the law to emerge. Unfortunately, the inviolability of private property remains the rule rather than the exception, notwithstanding whether the owner of the land is an individual or the state.

In addition to the problems of interpreting land tenure, excessive and inappropriate regulatory laws, and the other elements of the law which repress the poor in a legal and *de facto* sense, those without adequate shelter just as often do not benefit from those laws which could help them. Many positively designed laws relevant to health, living standards, housing and so forth are applied unequally and sporadically, if they are applied at all. Worse still, most of the urban poor are totally unaware that empowering laws even exist which could potentially help them. This point is tremendously important, as many of these assisting legal norms, (e.g. human rights) will frequently be deemed to be of superior legal importance than those which bind them endlessly if, in fact, they are ever interpreted by a court of law or other judicial body. Moreover, even those repressive laws which now exist could become empowering. For instance, if building codes are meant to promote health and safety (e.g. elements of the right to housing), then perhaps they would have more effect if they were seen to guide and advise the people who are already managing the building of most new dwellings on how these standards can be met at a minimum cost.⁷ Furthermore, because many elements of these repressive laws are only applicable at the city level, national human rights obligations will certainly override these in terms of legal significance and could be utilized to reformulate these codes.

As there has been a great deal written and discussed on the inappropriate nature of prevailing laws towards the poor, we need not go into more detail here.⁸ It is suffice to say that most of the laws affecting the urban poor play the role of oppressor and act as powerful hindrances. These affect access to land, tenure legalization, regulations concerning housing standards and services, employment questions and so on. However, the law is as much a question of terminology as it is a question of perception and resultant practice. Just as these laws can be used in a negative way they can also be used as creative forces aimed at securing justice. As will be shown in section five, each of the aforementioned areas of the law which so commonly repress the poor and maintain the status quo, are also the subject of human rights. Thus, while land tenure and building regulations are used as tools of oppression, there do exist property rights, housing rights and rights to adequate services. The problem is that it is only in rare instances that use has been made at the international and probably national levels of these laws as a means of protection and as a measurement of the actual legality or appropriateness of the laws forced upon the poor from above. This is very revealing of the potential use of human rights law to both substantiate claims to adequate housing and also to reveal the wholly inadequate nature of most laws which threaten the daily lives of the urban poor. Indeed, the nature of a law and its justification should relate to the benefits that the population as a whole receive from its application. Thus, judging laws from the perspective of human rights can lay these laws to shame.

At the international level, inappropriate national and local laws can be the subject of legal scrutiny. For states with international obligations to ensure the right to housing, any laws

5) *Ibid.*, pp. 23-25.

6) *Ibid.*

7) See note 2, p. 28.

8) On this area see *supra* notes 103 and, *inter alia*, Varley, Ann., "Illegality as an Urban Housing Issue in the Third World" and Varley, Ann., "The Relationship between Tenure Legalization and Housing Improvements: Evidence from Mexico City" In *Development and Change*, Vol. 18, 1987, pp. 463-481.

9) See note 3, section 2 notes, p. 40.

which prohibit the full actualization of this right cannot be used to justify any element of non-compliance with these same obligations. It is accepted that international law will apply to a state regardless of its domestic law, and that a state cannot, in the international forum, plead its own domestic law, or even its domestic constitution, as an excuse for diverging from its international legal duties.⁹ Once again, the utility of the human rights approach becomes apparent. While it cannot be denied that most laws do not explicitly benefit those living in poor housing conditions, it is arguable that many of these uses can be decreased with a concerted effort to promote the rights of those affected. This is a crucial area where much work remains to be done. These approaches have been tried with success, yet this is certainly much more an exception than the norm; especially when considering the frequency with which negative laws are applied. Unquestionably, the first step in utilizing this approach is to enable those affected to see that the law can act as a source of empowerment and must not necessarily act solely as an impediment to greater levels of justice.

4.3 The Law as a Form of Empowerment

Although the law is often perceived and used as a repressive tool, it can also be utilized in organized struggles to initiate a process of development by and for those without adequate conditions of shelter. However, an important question arises: how can the law be seen to act as a means of empowerment by both the urban poor and the state simultaneously? It is by reconciling the view of a government of the law and the perspectives of those affected (or protected) by it, that the crucial role of NGOs and community based organizations must be addressed. It is also in this context that a forceful, yet appropriate, relationship can emerge between community based organizations and NGOs at the grass-roots level, the national level and within the international arena.

Inherent in any attempt to utilize protective legal resources is the guarantee that those to whom the rights apply must be given the opportunity to participate directly in this process. Indeed, this is not only a prerequisite for defining appropriately those rights affecting the urban poor, but it must also act as the central function of community based organizations (often through information received from international NGOs) in assisting in the identification and enforcement of these rights. Unquestionably, conventional efforts aimed at elaborating economic, social and cultural rights, including the right to housing, are usually performed with a top-down approach by the UN and other international agencies, and by "experts", scholars and so on. While this work is crucial, it often precludes the development of housing rights by those who most urgently need them. This is one of the reasons why the law is only beginning to be seen from the point of view of empowerment.

Securing recognition of the right to housing as a right enforceable at both the national and international levels is the first step in this process. As we saw in section three, the right to housing is recognized in a number of human rights instruments, each applicable in a diverse number of countries. At the national level, rights to housing as opposed to regulations of housing are also widely (yet far from universally) codified within the constitutions and other laws in various states. In encouraging a government to enact appropriate legislation towards this end and especially in articulating and developing housing rights, NGOs and community based organizations can carry out a number of initiatives with their constituents, thereby beginning the on-going process of empowerment. Essentially, once the existence of a right to housing is known people have a focal point from which to demand government bodies and agencies to address practices or circumstances which contribute to the non-fulfilment of this guarantee. The right provides an essential commitment to develop protective measures geared to a nation's needs. As such, individual people can demand their rights by making accountable those who fail to create or enforce these measures.¹⁰ Moreover, an existing right to housing will empower people to participate in shaping policies and obligations designed to protect them from these deviations which are frequently imposed by public and private actors under the guise of "development".

10) See note 1, p. 204.

The identification of the elements comprising the right to housing in local, regional and national contexts takes the process of empowerment a step further. This part of the process could be based largely upon the negative uses of the law as well as focusing upon components such as:

- 1) the allocation of property;

- 2) zoning laws;
- 3) the availability of credit;
- 4) housing structure requirements;
- 5) the proximity to health and educational facilities, transport and work opportunities;
- 6) the costs involved with housing; and
- 7) the relevance of other rights or laws to housing and so forth.

When these are identified people and their organizations will be able to establish more easily where and to what extent government policy is lacking or is inconsistent with legal obligations. Furthermore, this process visibly demonstrates to the urban poor that their rights have either been violated or unfulfilled. As the awareness of this grows, so too does the awareness that certain legal measures will be required to rectify this or to prevent this from occurring in the future. Thereby organizations and groups can begin to identify legal methods needed to vindicate their rights to housing and to establish a variety of strategies to demand them.

Each of these steps from recognition of housing rights (I have a right to housing) to identifying the dimensions of the right (To me, my right to housing means ...) and to demanding compliance and promotion of these rights (There are methods I can use to ensure that my right to housing is realized and protected), each is a means by which those living in inadequate housing can empower themselves towards improving their conditions based upon the law. Because the strategies which could be applied towards demanding housing rights are so important and relevant to NGOs and community based organizations, they will be discussed in section eight.

4.4 Housing Rights in National Constitutions

A significant number of national constitutions, albeit a minority, contain either the right to housing *per se* or constituent elements of this guarantee. Less than one-quarter of the existing constitutions define this norm as a fundamental human right. Many states which do not enshrine the right to housing in their constitutions or which possess no written constitution, do however maintain various municipal laws such as statutes, administrative laws, executive decrees and so forth, some of which indicate elements of the right to housing. However, due to space constraints and the extreme variety of these legal documents, not to mention accessibility to these, this section will focus solely upon housing rights found in national constitutions.

To begin with, only 23 per cent of existing constitutions refer to a right to an adequate or reasonable standard of living, while just 43 per cent of these national legal sources contain a right to social security.¹¹ Thus, it can be derived from these figures that the corresponding percentage of constitutions recognizing the right to housing is rather limited. Nevertheless, a good deal of information pertaining to the legal contents of the right to housing, at least within specific contexts, can be derived from a relatively thorough examination of these pertinent clauses. Roughly 18 points can be discerned within the articles of constitutions concerning the right to housing which, when considered together, would constitute an effective national right to housing. However, as will become highly evident, no national constitution contains all of these components.¹² One is thus reminded here of the nine enabling strategies necessary for effective human settlements policies in states, adopted by Hardoy and Satterthwaite.¹³ Each of these strategies has been applied with a degree of success in a variety of urban settings however, in no city have all of them been simultaneously applied. Until now, the approach has been selective and scattered, much like the codification of housing rights in constitutions.

The direct codification of the right to housing in these terms is apparent in several constitutions, such as those of Haiti (Art. 22); Honduras (Art. 178); Iran (Art. 31); Nicaragua (Art. 64); Portugal (Art. 65); Spain (Art. 47); Yugoslavia (Art. 164); the USSR (Art. 44) and others. For instance, the Nicaraguan constitution of 1987 provides that "Nicaraguans have the right to decent, comfortable and safe housing that guarantees familial privacy. The state shall promote the fulfilment of this right." Whereas in Spain, "All Spaniards have the right to enjoy decent and adequate housing ..." Other constitutions approach the question of housing rights by noting the duty of the government to provide assistance (including housing) to the poor in order to satisfy the basic needs of the population. The constitution of Ecuador thus provides that "... the state shall promote housing programmes of social interest. It shall provide the

11) See Van Maarseveen, Henk and Van Der Tang, Ger., *Written Constitutions: A Computerized Study*, Oceana Publishers Inc., Dobbs Ferry, New York, 1978.

12) See Appendix 1.

13) See Hardoy, J. and Satterthwaite, D., *Squatter Cities*, Earthscan, London, 1989.

means of subsistence to whomever lacks resources and is not in a position to acquire them and can find no person or agency obliged by law to provide them." The Greek constitution stipulates in Article 21(4) that "The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special state care." Additional constitutional sources of this type of obligation include the Dominican Republic (Art. 17); Pakistan (Art. 38(d)) and Peru (Art. 18).

The most common form in which housing rights are enshrined in national constitutions is in the context of the promotion and construction of housing by the state. Article 22(2) of the Dutch constitution provides that "It shall be the concern of the authorities to provide sufficient living accommodation ..." Similarly, the Costa Rican constitution provides that "The state shall promote the construction of low-cost housing and create a family homestead for workers." One of the most detailed delineations of this principle is found in article 13(9) of the 1986 Philippines constitution stating that "... the state shall by law, and for the common good, undertake, in co-operation with the private sector, a continuing programme of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centres and resettlement areas. It shall also promote adequate employment opportunities to such citizens ..." Several other states which enshrine similar provisions in their constitutions are Guatemala (Articles 119 and 105); Panama (Art. 109); Paraguay (Art. 83); Peru (Art. 18); Portugal (Art. 65); Spain (Art. 47); Vietnam (Art. 62); North Korea (Art. 26); USSR (Art. 44); and Poland (Art. 79(5)).

In another method of codifying housing rights, several states have included the right to housing within the broader realm of the right to an adequate standard of living. In Article 20(13) of the constitution of Equatorial Guinea for example, we find that "Every person enjoys the right to a standard of living which ensures health, nutrition, education, clothing, housing, medical care and necessary social services". Similar provisions can also be found in the constitutions of Ecuador (Art. 179) and the Peoples Republic of Bangladesh (Art. 15). As far as the direct link between the right to social security and housing is concerned, it appears that the Bolivian constitution stands alone in this regard. It provides that "... the social security systems shall be based on principles of universal coverage ... embracing the contingencies of ... housing of a social interest". In endeavouring to create conditions necessary for the fulfilment of housing rights, Ecuador and Cyprus have enshrined the right of the state to expropriate land for the construction of low-income houses.

Although the notion of employer responsibility to provide housing accommodation is not uncommon, few constitutions enshrine this duty. It is probable, therefore, that these types of obligations are present in other areas of the law where they are applicable as well as being present in the ILO Recommendation 115. An example of the few constitutional sources on this point is Article 105 of the constitution of Guatemala which provides in reference to workers' housing that "... 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."

Several constitutions declare that the right to housing or housing in general terms constitutes a social interest. This particularly true in several Latin American constitutions such as those of Ecuador, the Dominican Republic, and Honduras. The latter two states also address the importance and responsibility of the state to provide credit for housing on an equal basis. The Honduran constitution is the most detailed in these two areas and thus states, *inter alia*, in Chapter IX concerning housing that "(178) All Hondurans have the right to decent housing. The state shall design and implement housing programmes of social interest ... (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. (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."

Several constitutions refer directly to some of the rights noted in Section five concerning the permeability of rights. For instance, the relationship between housing rights and the rights to land, environmental quality, privacy and family life can be discerned. In the context of land rights, although many constitutions note that land and property should either be protected or

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ultimately viewed in the public or social interest, few national constitutions provide the right to the allocation of land as a human right. One which does so, however, is that of Kampuchea which in Article 15 provides that "citizens have the right to use and inherit land allotted by the state to each family according to the provisions of the law, on which to build a house and grow crops or orchards." Yet, even this provision is not as all encompassing as could be expected. The Ecuadorian constitution provides a good example of the links between housing and the environment. In Article 50, we find that in order "... to make the right to housing and the conservation of the environment effective, municipalities may expropriate, reserve and control access for future development in accordance with the law." With regard to privacy, the West German Basic Law provides a unique exception to this right by providing in Article 13 that "... the inviolability of the home cannot be violated except ... to alleviate the housing shortage." Finally, concerning family rights and the right to housing, the constitution of Paraguay provides an interesting clause. Article 83 states that "Every family has the right to a home standing on its own land for which purposes institutions shall be perfected and the most favourable laws shall be enacted in order to make for more widespread ownership of urban and rural real property ..."

In terms of legal protection against eviction, a majority of constitutions enshrine that, *inter alia*, the right to property is inviolable if the use of this property is not contrary to the public interest. The way in which such guarantees can be utilized will, of course, depend upon how the concept of property ownership is perceived in legal terms within a given society. Certainly, progressive and tolerant perceptions of what constitutes private property vis-a-vis slum dwellers and squatters will in turn determine the extent to which these laws can be used to prevent or prohibit forced evictions from being carried out. While this area of the law could be used with some degree of success, a far more appropriate form of constitutional protection would be geared towards guaranteeing the rights of the urban poor by enshrining a right for these groups not to be evicted. In spite of the desirability of such a right, as far as the author is aware, only the 1986 Philippines constitution provides this type of legal protection. In Article 13(10) we find: "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 relocated." Hence, in legal terms, if considered along with the right to housing which also exists within this constitution, these clauses provide significant *de jure* protection against eviction for the poor of the Philippines. Of course, as with all laws designed to protect the less powerful in society, the implementation of these rights is always the greatest challenge. It thus remains to be seen how this provision will be applied.

In addition to these ways in which housing rights and their components are found within national constitutions, several other points are worth noting. While neither the constitutions of Ghana nor El Salvador enshrine the right to housing *per se*, they do contain unique clauses relevant to housing. For instance, in Ghana, Section 50(1) of the 1982 constitution provides that: "No person shall own more than one house built by the State Housing Corporation Terra Development Corporation or other public body." Whereas in Article 51 of the constitution of El Salvador it is stated that "... 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 services and attention necessary for their well-being."

Lastly, several constitutions, including those of Portugal, Djibouti, Gabon, Mali and Tanzania, mention the direct incorporation of an international legal text which themselves contain the right to housing. In Portugal, the CESCR is directly applicable under domestic law, whereas, in the other states the entire UDHR is, in various ways, incorporated into their national laws. Moreover, by implication, in those states with a monist approach to human rights law in the domestic context and which have ratified the CESCR, the latter instrument must be assumed to be directly applicable under the domestic laws of such a nation. Therefore, the national laws of these states can further be legally assumed to include the right to housing and other related rights as found in Article 11(1) and others.

Several points can be made to summarize this section on one domestic legal means of enshrining the right to housing. Firstly, as this section has shown, the vast majority of national constitutions neither include the right to housing nor mention policies or measures towards improving housing conditions. Because national constitutions are generally the highest law of the land, the importance of including the right to housing as well as *de jure* and *de facto*

protection against forced eviction cannot be overemphasized. As such, in states which do not promote housing based upon the legal rights of their citizens, a serious attempt should be made by NGOs, community based organizations and others to urge states to enshrine such rights within national constitutions or within other appropriate domestic legal initiatives. Elements of potential models for such legislation will be included in Section nine.

The second point concerns the wide variations in those housing rights which do exist in constitutional sources of law. Not only does this conclusively reveal the difficulties in assessing the universal contents of the right to housing, but it also shows, more optimistically, that housing rights vary necessarily according to cultural and regional differences. These divergent approaches to legal and societal perspectives though, do not imply that a universally applicable right to housing cannot exist. Rather, it discloses that national, regional, local and even city approaches to rectifying housing disparities and problems will vary according to the circumstances and exigencies of the situation. As such, no state should be considered to be exempt from adopting housing rights in their internal legislation and to be bound internationally to the same degree. Housing rights are valid everywhere.

The final point deals with the greatest difficulty of all; the implementation of housing rights found within national constitutions. As seen in Section 4.3, the law can be used to empower those who live without adequate shelter. However, despite this potential the law is all too often manipulated as a tool for the more powerful elements of society to further their own goals and, thus rarely those of the urban or rural poor. Another dilemma is that many constitutional provisions are impossible or very difficult to apply in a judicial sense. In these cases, however, the law can be used as a rallying point aimed at encouraging positive action by the public authorities. While it is a highly desirable ideal, the mere *de jure* existence of a right to housing can in no way be seen as a guarantee that it will be realized in a *de facto* sense. Only creative action from the non-government to the government level will enable the words "a right to housing" to become a concrete reality for those people on earth currently lacking such an imperative.

Section Five

The Permeability of Rights

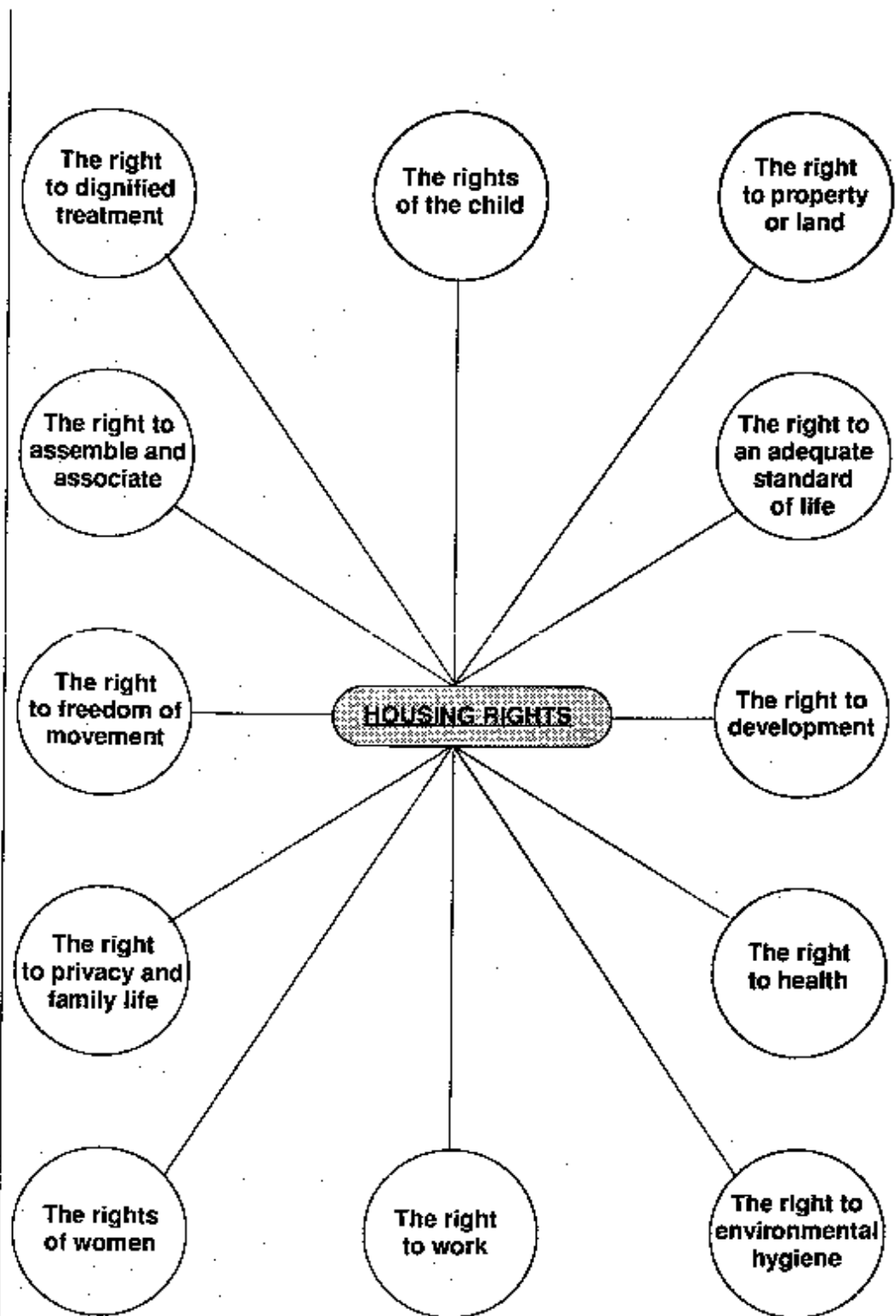
Although many things remain unclear at the international level concerning the right to housing and the question of eviction, one certainty is that this right possesses a number of qualities which link it directly to several other existing rights. These would include such rights as those relating to privacy and family life, development, health, work, assembly and association, the rights of the child and others. As with the entire gambit of human rights law, the right to housing cannot be seen to be isolated from these related concerns. Rather, it must be perceived as a right which, due to its very nature is closely tied to these other rights; some of which are of a more civil and political nature, and others of an economic, social and cultural nature. From this perspective two points emerge concerning this legal interrelationship and the actualization of the right to housing. On the one hand, it could be argued that a government placing relative priority on the right to housing (without, of course, subjugating other rights) could greatly enhance respect for those rights directly related to it (Approach 1). In short, if the right to housing was a focal point of public action, many elements of the rights to health, environmental hygiene, family life etc. would (or could) largely follow suit, in terms of realization. Secondly, an approach based upon the "permeability factor" could utilize these related rights to further the demands associated with the right to adequate housing. This would be particularly true with the rights to privacy, family life, work or livelihood, personal security and freedom of movement (Approach 2).

In theory, both of these approaches could be successful if certain conditions were met in each case. Unquestionably, the first approach will be contingent upon the legal definition given to the right to housing (should such a right exist within a particular state) by the government concerned or by the international community. If housing is approached from a non-holistic perspective, this method stands little chance of accomplishing anything. Likewise with the second approach, not only must these laws exist within a society with definitive obligations by an entity or entities, but the danger also lies in a potentially narrow judicial definition being applied. Were this to happen it would be difficult to legally entrench a broadly defined right to housing within the first method discussed here.

Neither of these approaches is particularly revolutionary. Each has been attempted, in different contexts and states and with very different measures of success. However, it is not only complaints and legal cases which can encompass these two approaches. They also apply to states' reports and their guidelines, to "general comments" concerning relevant rights by monitoring bodies and to cases put forward seeking judicial redress. Thus, these approaches are applicable across the legal spectrum as well as within the arenas of political pressure such as housing campaign strategies, development plans and so on. This said, what follows is a synopsis of some of the more pertinent rights relevant to the right to housing which could potentially be either realized (Approach 1) or utilized towards the realization of this right (Approach 2). It will include a brief description of how these rights relate to the right to adequate shelter, where they exist at the international level, the extent to which (if at all) they have been interpreted by judicial or quasi-judicial bodies in this context and how these norms could be utilized, with the aim of improving housing conditions, within the systems where they are found.

Civil and Political Rights

This set of rights linked to the right to housing, includes: the right to privacy and family life; the right to be free from any form of discrimination; the rights of the child; the right to freedom of movement; the right to be free from cruel, inhuman or degrading treatment; the rights of assembly and association; the right to property or land; and the rights of women. Some of these rights have been codified with direct references to housing, whereas others have a more indirect link with housing matters.



5.1 The Right to Family Life and Privacy

The rights to family life and privacy are rights which are universally recognized in a variety of international legal texts and within most constitutions of the world. Because of the obvious correlation of these rights with the right to housing, the potential exists for these rights to be utilized to substantiate one's claim to a right to housing or constituent elements thereof. Certainly there are good grounds for this as, within most of the universal and regional instruments analyzed, there is a codification of these rights, although to different degrees. Within the UDHR (Art. 12), the CCPR (Art. 17), the ECHR (Art. 8), the ACHR (Art. 11) and to a certain degree the ESC, either the notions of the human right to family life or the right to privacy are found. These rights are considered in the context of the family and the home, and to correspondence. The most important legal interpretations of these rights have occurred under the ECHR, the ESC and the CCPR.

1) See Fawcett, J.E.S., *The Application of the European Convention on Human Rights and Fundamental Freedoms*, Clarendon Press, Oxford 1987, 2nd edition, p.227.

2) See European Commission cases 6780/74 and 6850/75, *Cyprus versus Turkey*, 4 EHRR, Report of the Commission, pp. 208-210.

3) *Ibid.* Opinion of the Commission, 10 July 1976, pp. 72-73.

4) See case 5488/72, 30 May 1974, *European Yearbook*, XVII, p. 222.

5) Decision of admissibility of application 4560/70, 21 May 1975, unpublished.

6) See case 7367/76, *Guzardi versus Italy*, in Sieghart, p. 318.

Under Article 8 of the European Convention on Human Rights (ECHR) everyone has the right to respect for their private and family life, their home and their correspondence. Basing their decisions upon complaints put forward claiming non-compliance with this article, the European Commission on Human Rights has considered the question of housing on several occasions. Although the expropriation of land or buildings has provoked far fewer applications (complaints) than might have been expected, a workable amount of case law has been established.¹ For the purposes of this report, these can be divided into three categories: 1) evictions; 2) the provision of homes; and 3) discrimination with regard to housing.

In 1974 the widespread eviction of Greek Cypriots from their homes by the Turkish invading forces led to over 170,000 homeless people in northern Cyprus.² This fact and others were the focus of an inter-state complaint by Cyprus against Turkey alleging non-compliance with the ECHR in many respects. After considering this aspect of the complaint, the commission issued the following opinion:

"The commission considers that the evictions of Greek Cypriots from houses, including their own homes, which are imputable to Turkey under the convention, amount to an interference with rights guaranteed under Article 8(1) ... namely the right of these persons to respect for their home, and/or their respect for private life. The commission further considers that the transportation of Greek Cypriots to other places, in particular the forcible excursions within the territory controlled by the Turkish army, and the deportation of Greek Cypriots to the demarcation line, which are equally imputable to Turkey ... also constitute an interference with their private life".³

Thus, the right to respect for the home and to privacy under the terms of the ECHR include the right not to be evicted from one's home. However, the definition of "home" under the ECHR has never been elaborated to determine the applicability of this case to evictions of "squatters" or those without "legal" rights to inhabit a certain dwelling. The Commission has declared though that the "home" "... is a precise concept which may not be arbitrarily extended."⁴ Thus, this point remains somewhat unclear. In the overall context of evictions though, the ECHR appears to be protective.

In case 4560/75 an applicant submitted that the local authority for the area in which she lived was in breach of Article 8 of the ECHR for its failure to exercise its discretionary power compulsorily to acquire the freehold of her accommodation. In essence, she claimed that she had the right to be provided housing under the convention. The commission felt differently however, finding that: "While it is true that Article 8(1) provides that the state shall respect an individual's home and not interfere with this right ... Article 8 in no way imposes on a state an obligation to provide a home."⁵ However, although a state is under no obligation to provide housing, they are under an obligation to ensure that the public authorities do not impose intolerable living conditions on a person or his family, according to the commission.⁶

Finally, with regards to discrimination and housing under the ECHR, the commission has declared that while Article 8 could not imply a right to the provision of housing, if a discriminatory policy in the field of the allocation of public housing were found to exist, it could raise an issue under Article 8 read in conjunction with Article 14 which prohibits discrimination. Thus, Article 8 does not include an obligation for states to provide housing, however it does imply that all public housing provided by the authorities must be in acceptable condition. Moreover, the right to privacy includes protection against evictions and probably against discrimination in housing.

Although the European Social Charter has not gained the notoriety of the ECHR, it too contains an important provision relating to the rights of family life. In Article 16 concerning the right of the family to social, legal and economic protection it is provided that "With a view to ensuring the necessary conditions for the full development of the family, which is a 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." While little has been done to expand on these norms, it is clear that the promotion and provision of family housing is an obligation of states parties to this instrument.

Within the CCPR Article 17 is the focus of the right to privacy and family life. The small amount of case law under the CCPR considered by the Human Rights Committee has so far,

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7) See "Selected Decisions of the Human Rights Committee", Case No. 129/1982, *I.M. versus Norway*.

been scant with regard to this Article. As such, only one case is of importance to this discussion. In the 1982 case of *I.M. versus Norway*, the committee decided that under the CCPR the state was under no obligation to allocate houses under Article 17.⁷

5.2 The Right to be Free from any Form of Discrimination

The broad prohibition of discrimination within CDESCR has been examined in the way it could relate to Article 11(1) and the right to housing. Indeed, within virtually every human rights instrument the concepts of equality and non-discrimination are enshrined. However, it is only directly linked to the right to housing within the International Convention on the Elimination of Racial Discrimination (CERD). Within Article 5(e)(iii) of CERD, "... states parties undertake 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 right to housing."⁸ Therefore, states parties to this convention, the most widely ratified of all major human rights instruments, are under an obligation to ensure that no discrimination takes place with regard to housing. If considered along with the non-discriminatory obligations assumed by states under the CDESCR, the Vancouver Declaration and others, it is notable that protection against discrimination is widely applicable. Thus, in general terms, states parties to the CDESCR and/or the CERD are obliged not to discriminate:

- 1) based on race, colour, national or ethnic origin, sex, language, religion, political or other opinion, property, birth or other status;
- 2) in the distribution or allocation of public housing or resources towards housing improvement;
- 3) in the access to renting or buying a house or land upon which to build;
- 4) in the enforcement of regulatory measures related to housing.

An argument could therefore be conceived, both legally and politically, and based upon these clauses of equality which aims to ensure that not only does discrimination not occur, but also that equal allocations are made towards improving shelter conditions. Such an initiative(s) could be carried out nationally or internationally through the domestic actors and the Committee on the Elimination of Racial Discrimination or the Committee on Economic, Social and Cultural Rights.

Under the European Social Charter in Article 19(4), migrant workers are assured "treatment not less favourable than a states' own nationals in respect to ... accommodation."⁹ This obligation has been legally interpreted in three important ways:

- 1) It is not enough for a government to prove that no discrimination exists in law alone; it is obliged to prove in addition that no discrimination is practised in fact;
- 2) In one case, it was decided by the European Committee of experts that a state party in which alien workers may only be granted public housing if they have lived there for seven years fails to meet the obligations under this paragraph; and
- 3) Even where there are social problems due to overcrowding, the number of migrant workers is small and the situation in respect of housing therefore trivial; a residential qualification of five years for the provision of publicly financed accommodation in respect of any person who was not born within the state fails to satisfy the requirements of this paragraph.¹⁰

While these instances occurred within states in western Europe, they could nevertheless be utilized as precedent-setting cases at the international level.

5.3 The Rights of the Child

Children's rights are found within many human rights instruments, some specifically concerned with children and others where these rights are more generally defined. In the UN Convention on the Rights of the Child and the UN Declaration on the Rights of the Child of 1959, housing questions are incorporated. Within the declaration, Principle 4 provides: "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 both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services."¹¹ This general right to housing and its

8) See the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) adopted and opened for signature and ratification by UNGA Resolution 2106 A (XX) of 21 December 1965. Entered into force on 4 January 1969.

9) See the European Social Charter, adopted in Turin, 18 October 1961, by the Council of Europe.

10) See note 3, Section 2 notes, pp. 186-7.

11) See the Declaration of the Rights of the Child, proclaimed by the UNGA on 20 November 1959. (Resolution 1386 (XIV)).

component elements has also been included within the convention. Article 27 is the most conclusive by providing, *inter alia*, "The states parties to the present convention recognize the right of every child to a standard of living adequate for the child's physical, spiritual, moral and social development. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capabilities, the conditions of living necessary for the child's development ... The states parties to the present convention, 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 case of need provide, material assistance and support programmes, particularly with regard to nutrition, clothing and housing."¹² While this Article resembles Article 11(1) of the CESCR, one important distinction is apparent. In contrast to the latter article, wherein the obligations related to housing rights are generally provided, the obligations in the convention are more precisely defined and incorporated within a broader scope. Thus, not only do children have a right to an adequate standard of living, but when there is "a case of need" in this regard, the state will clearly be legally bound to provide material assistance and support programmes geared towards directly guaranteeing this right. Although the qualifications of "in accordance with national conditions" and "within their means" may pose some problems, the potential effect of this government obligation is quite significant.

In addition to these two instruments, the ESC also enshrines many rights relevant to children. Of relevance are three specific articles which state: "I(17) Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection"; "II(7)(10) With a view to ensuring the effective exercise of the right of children and young persons to protection, the contracting parties undertake ... to ensure special protection against physical and moral dangers to which children and young persons are exposed ..."; and "II(17) With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the contracting parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services."¹³

Although these norms have not been exposed to sufficient legal interpretation, they do provide a framework with which to assert children's rights to housing, especially if read in conjunction with Article 16 concerning the provision of accommodation. One interpretation of Article 17 by the European Committee of Experts has stated that: "Homeless children should be provided with the nearest possible approximation to a normal home environment."¹⁴

Each of the examples of the rights of the child shown here exemplify the *de jure* links between housing and the child. Housing rights advocates can draw substantially on the declaration convention and the ESC as sources of international law which expressly provide housing rights with a place within the overall context of the rights of the child. Because children are so often the first victims of inadequate shelter conditions, these conferred rights are crucial. Moreover, it is certainly feasible that a general argument demanding the fulfilment of the right to housing for all could draw substantially upon these examples of international legislation.

5.4 The Right to Freedom of Movement

The similarities between this universally recognized right and the right to adequate shelter are essentially two-fold. Firstly, the various formulations of the freedom of movement are usually codified together with the freedom to choose a residence. While the second element relates to the importance of this right in dealing with questions of mass forced evictions.

The right to housing necessarily entails the right to choose the location of the dwelling or residence in question. Within the UDHR, the ADRD, the ACHR, the CESCR, the ECHR, the ESC and the AfCHPR, freedom of movement and the right to pick one's residence are included together. Typical of the way in which this right is codified is Article 13(1) of the UDHR which provides: "Everyone has the right to freedom of movement and residence within the borders of each state." If one is unable to move freely within a state's borders, his or her choices of finding a residence or a home would be extremely limited. Such a right does not, however, include the obligation of a state to provide housing *per se*. Rather, it does imply that the state must not prevent persons from having the option to choose where to reside such

12) See Draft Convention on the Rights of the Child, in SIM Newsletter No. 20, December 1987, p. 93.

13) See note 9.

14) See Sieghart, p. 213.

15). See Writ Petitions Nos. 4610-1612 of 1991, *Olga Tellis & Ors versus Bombay Municipal Corporation and Ors* and Nos. 5068-5069 of 1981, *Vayyapuri Kappusami and Ors versus The State of Maharashtra and Ors*.

as, for example, rural to urban migrants and/or slum dwellers and "illegal" squatters.

Just as this freedom relates to the urban poor in the context of residence, it is also quite important when considering some of the local ramifications of forced evictions. For instance, one of the central arguments by the plaintiffs in the now famous *Bombay Pavement Dwellers Case* was based upon this point. Those to be removed argued that forcible eviction would, *inter alia*, amount to a violation of their rights to freedom of movement.¹⁵ To some degree they were successful with these arguments. In general terms, when it is clear that evictions are a strong possibility, legal reference to this right may be useful to some extent in either preventing eviction or in obtaining governmental assurances about the way in which they are to be carried out. It seems clear that the policies of some governments to "truck the squatters to the countryside" would constitute a violation of the right to freedom of movement and to choose a residence. Indeed, one could imagine a number of instances where it could be useful to utilize these norms in preventing forced evictions.

5.5 The Right to be Free from Cruel, Inhuman or Degrading Treatment

While this right(s) is virtually always associated with acts of government sanctioned torture, it is foreseeable that this norm could be utilized in a legal argument decrying the deplorable conditions found within slum and squatter settlements around the world. Although the author is unaware of any cases where this argument has been attempted, one notable example is known within the UN Commission on Human Rights. During the 1987 session of the commission when a resolution on the realization of the right to housing was under discussion, one NGO participant urged that the resolution should include reference to this right(s). He suggested that this right and the right to vote should be covered within the resolution as they were frequently not realized for those forced to live in inadequate housing conditions.¹⁶ However, this approach was seen by the commission as inappropriate and was consequently not included in Resolution 1987/22. While the commission was probably politically hesitant to add these points as well as being wary of sanctioning a broad interpretation to this important group of rights, it may become an acceptable notion in the future as the international perception of human rights progressively transforms itself.

16) See note 9, Section 3 notes.

5.6 The Right to Assembly and Association

These are two additional rights which are found throughout the texts of international human rights law.¹⁷ Their relevance to the right to housing applies essentially to the collective right of individuals to form community based organizations and other groups with the purpose of furthering their rights to housing. As is well known, without the effective functioning of these groups, any collective demands for improved shelter would be practically impossible. So too, of course, would be the enabling policies aimed towards this end. Moreover, in the formation of housing co-operatives and other such endeavours at the local level, the right to assemble and associate must be respected. While there is no appreciable international case law specifically on this point, the links between housing rights, especially those of a self-help orientation, and the rights under discussion here are unmistakable.

17) Codifications of these rights can be found in: the UDHR (Art. 20); the ADRD (Arts 21 and 22); the CCPR (Arts 21 and 22); the ECHR (Art. 11); the ACHR (Arts 15 and 16) and the AfCHPR (Arts 10 and 11).

5.7 The Right to Property or Land

The Executive Director of the UNCHS (HABITAT) has stated that "Land is the key to tackling the housing crisis facing Third World cities. The lack of cheap, legal housing plots means that most new housing today is built in illegal shanty towns. If city governments provide such plots, they could slow the rapid growth of these shanty towns and ease the pressure in crowded city slums."¹⁸ Indeed, land questions and land policy are central to the dilemma of inadequate shelter wherever this is found to exist, as well as being tantamount to the realization of the right to housing. In legal terms, this point can be approached from the angle of a right to land or a right to property, although these rights remain underdeveloped in the context of human rights and housing rights. The Vancouver Declaration is notable in many respects, not least for its recognition of the importance of land in human settlement issues. For instance, several of its recommendations to governments in this area are as follows:

18) See note 3, Section 3 notes.

"Land is a scarce resource whose management should be subject to public surveillance or control in the interest of the nation."

"Changes in the use of land, especially from agricultural to urban, should be subject to public control and regulation."

"The unearned increment resulting from a rise in land values brought about by public actions or decisions, or general population growth, should be recaptured by public bodies."

"Public ownership of land should be used to secure and control urban expansion, to implement urban and rural land reforms and to ensure that serviced land is available at price levels affordable to all."

"Past patterns of ownership rights should be transformed to match the changing needs of society and be collectively beneficial."

"Comprehensive information on land capability, characteristics, tenure, use and legislation should be collected and constantly updated so that all citizens and levels of government can be guided as to the most beneficial land use allocation and control measures."¹⁹

19) *Ibid.*, pp. 17-18.

20) See generally: McAuslan P., note 3, Section 4, and Hardoy, Jorge and Satterthwaite, David *Shelter, Need and Response: Housing, Land and Settlement Policies in Seventeen Third World Nations*, Wiley and Sons, 1981.

21) See note 62, Section 3 notes, pp. 3-4.

Despite these forward-looking recommendations to the 132 states which took part in the Vancouver Conference, the *de facto* and *de jure* situation facing the vast majority of the urban poor in terms of rights to land is far from satisfactory. This occurs, in part, because of the urban land market which, through prices and government decisions, is such that it does not allow land to be allocated to the poor for the purposes of housing.²⁰ Furthermore, the lack of tenure legalization for inhabitants of "illegal" settlements also acts as a major prohibiting force. Additionally, the often extreme legal interpretations of the inviolability of private property found in most legal systems, but particularly in civil and common law systems, is a further contributing force to the inappropriate and biased urban land policies prevalent throughout the world. Of course, there are viable means available which, if carefully and appropriately applied, can open up possibilities for wider ownership and tenure of land within human settlements.²¹ While these have been considered in depth in a variety of contexts, the central question here concerns the extent to which international human rights law can be used as an agent to either enforce existing "good" laws related to land or to alter land laws which are at present negatively affecting the status of those inadequately housed. Most areas of the law concerning land utilization, tenure, planning and so forth are not often covered directly by the category of human rights law. Indeed, a human right implies a duty by the state to provide an entitlement to its citizens or to refrain from actions negating an entitlement. If we utilize this point within the concept of land rights or property rights (at the international level at least) an unfortunate state of affairs emerges.

Although the UDHR provides in Article 17 that: "Everyone has the right to own property alone as well as in association with others" and that: "No one shall be arbitrarily deprived of his property", neither the CCPR nor the CESCRC include derivations of this right. Other instruments enshrining the right to property are the ADRD, the ACHR and the AfCHPR. While this right has not yet been interpreted to oblige governments to provide or allocate property *per se* (although this might be implied if read in conjunction with provisions to the right to housing), these derivations of this right are important in that all of them exact limits on this right. For example, Article 21(1) to (3) of the ACHR states that: "(1) Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interests of society. (2) No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest ... (3) Usury and any other form of exploitation of man by man shall be prohibited by law." The ADRD is also interesting in terms of Article 23 which reveals that: "Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and his home."

Thus, in all these instances, states parties to these instruments containing property rights:

- 1) cannot infringe the right to own property or land;
- 2) can limit the absolute nature of property rights in the interests of society; and
- 3) are not bound necessarily to provide land or property as a mandatory allocation.

22) See note 3, Section 4 notes (McAuslan) for detailed coverage of the role of land and property in questions of human settlements.

Of course, these points are derived solely from the right to property and not housing. However, if we consider these two rights in terms of their complex interrelationships, it does appear that the right to property, especially in terms of its potential limitations, can play a substantial role towards the provision of adequate land and housing in urban centres where it is necessary. Because the entire notion of land and property rights is a very diverse and complicated one, it cannot be covered here in sufficient detail.²² Suffice it to say that although governments may have the legal option, and perhaps responsibility, of expropriating land for the benefit of the society at large (e.g. landless slum-dwellers and squatters without financial means to acquire it themselves), powerful elites and landowners, political considerations and the lack of wherewithal to do so are virtually always seen as more important considerations. This is not to say that the law prohibits positive initiatives in this regard, however, it does imply that the potential willingness of public authorities only rarely exists to the necessary extent.

In essence, the right to housing coupled with that of property can potentially yield favourable results in terms of land allocations and tenure. Yet, owing to blatantly unequal and absolute perceptions of property throughout the world, it seems advisable to pursue the right to land or property as an element of the right to housing rather than vice versa. Without a re-orientation of land laws, many prerequisites of housing rights will continue to be denied. It is wholly apparent that many urban land policies, which are probably best judged by observing housing conditions in a city, must be seen as almost perpetual failures. And therefore, as it may be easier to utilize human rights law in the context of housing rights rather than vis-a-vis the right to property, it seems that the latter right should be seen as an important point of substantiation of housing guarantees. Nevertheless, it is obvious that land policies and concepts of property ownership will have to be reformulated if housing rights are ever to be universally realized. While much remains to be done in the context of property rights at the international level, states should be urged to seriously consider the statement by the World Commission on Environment and Development which states: "When half or more of a city's workforce has no chance of obtaining a legal plot on which a house can be built, let alone of affording to buy or rent a house legally, the balance between private land-ownership rights and the public good must be quickly rethought." Indeed, it is time for states to begin utilizing the restrictive clauses of property rights in the social interests of a state in order to not only fulfil their obligations to provide housing, but also to provide a dignified life for all.

5.8 The Rights of Women

Although many of the texts comprising international human rights law are couched in sexist terminology, e.g. the use of the terms "man", "he" or "his", it is self-evident that human rights apply equally to men and women. The effect of these gender oriented terms has frequently relegated the rights of women to a lower degree of importance. Nevertheless, the last two decades have witnessed an increasing number of initiatives aimed at bridging this legal gap. Examples of this are the Declaration on the Elimination of Discrimination Against Women of 1967 and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979, which entered into force in 1981. The latter instrument forms yet another direct link in the permeability of rights surrounding the right to housing. The most important provision in CEDAW in this respect is found in Article 14(2)(h) which provides the following:

"States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on the 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." Another relevant, yet more general, clause is found within Article 3 which declares that "... state parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."

Therefore, viewed in the context of the permeability factor the rights of women under CEDAW can be utilized to substantiate the claim to housing rights and their components.

Economic, Social and Cultural Rights

Because the right to housing is contained in this category of rights, it is to be expected that a number of other component rights in this area should be strongly linked to it. Indeed, the rights to work, health, environmental hygiene/quality and development could each be drawn upon in order to substantiate housing rights and to guarantee a holistic approach to human settlement policies.

5.9 The Right to Work

The right to work is found within most of the human rights texts concerned with the protection of economic, social and cultural rights such as the CESC, the ESC and the AfCHPR, as well as being implicit in many of the texts adopted by the ILO. This norm is linked to the right to housing in a number of ways, two of which demand discussion. Firstly, the concept of decent work or employment as a right of all individuals, if fully implemented would obviously contribute significantly to at least the partial fulfilment of the right to housing. However, the right to work, which necessarily includes the right of everyone to the opportunity to gain his or her living by work which he or she freely accepts or chooses, remains a dream to millions throughout the world, north and south alike. One net result of the deprivation of this right is the frequent inability to afford an adequate home or land upon which to build one. When satisfactory employment is either scarce or non-existent, those requiring work will frequently turn to the "informal sector" or "petty commodity sector" in search of a means of livelihood.²³ Within this largely individualized realm of employment, the often paltry sum earned is all too often barely enough to make ends meet. This consequently has an impact upon the quality of housing available to those employed in the sector which is so beneficial to the upper and middle classes of any society.²⁴ Because there is such a high degree of insecurity in this type of employment, due to fluctuating levels of income, the often "illegal" nature of the work because of the lack of official permits and so on, it is made all the more difficult to find adequate accommodation. Thus, we can see the importance of the availability of sufficient employment towards securing the right to housing.

The other important way in which the right to work is inextricably linked to the right to housing is in the proximity of employment options to housing. As the majority of those living in inadequate conditions are impoverished and without sufficient social or economic opportunities, if employment possibilities are not close by they may not be able to work because of the high costs of transportation to and from the locations involved. As stated earlier ILO Recommendation 115 provides that "workers' housing should, in so far as is practicable and taking into account available public and private transport facilities, be within easy reach of places of employment." Thus, by supporting the claim of the necessity of local employment options, this recommendation can be used to legally substantiate it. Moreover, when this instrument is revised, it is possible that this legal argument will gain additional credibility.

The second point here concerns the Bombay Pavement Dwellers Case in which a central argument by the plaintiffs focused upon the guarantee of the right to work, utilizing the right to life as found in Article 21 of the Indian Constitution. In arguing that the pavement dwellers' right to livelihood would be violated if they were removed from their settlements, their lawyers had a certain degree of success.²⁵

5.10 The Right to Health

Without the services inherent in the right to adequate shelter, such as potable or piped water, sewers, hygienic means of disposing of waste, as well as those structural elements required for a home to be considered adequate, standards of health decrease sharply. Acute respiratory diseases, tuberculosis, intestinal parasites and diseases linked to poor sanitation and contaminated drinking water (diarrhoea, dysentery, hepatitis and typhoid) are normally endemic: they are one of the major causes of illness and death, especially among children.²⁶ These factors have been recognized for some time and can be found within a series of human rights instruments, often together with the right to housing. These two rights are considered together in the UDHR (Art. 25) and the ADRD (Art. 11), while the right to health is considered alone in the CESC (Art. 12), the ESC (Art. 11) and the AfCHPR (Art. 16). If we consider

23) For a specific analysis of the role of the petty-commodity sector, see Andriessen, Bart and van der Broek, Kees., "Small Town Enterprises and Regional Development: The Case of Purwejo-Klampok Central Jaya", Discussion Paper, University of Utrecht, January 1988.

24) See note 62, Section 3 notes, in general and others.

25) See note 15.

26) See note 62, Section 3 notes, p. 3.

Article 12 of the CECSR we can observe that governmental responsibility in the context of health as it relates to housing is substantial. It provides that:

- 1) The states parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- 2) The steps to be taken by the states parties to the covenant to achieve the full realization of this right shall include those necessary for: a) the provision for the reduction of the still birth rate and of infant mortality and for the healthy development of the child; b) the improvement of all aspects of environmental and industrial hygiene; c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and d) the creation of conditions which would ensure all medical service and medical attention in the event of sickness."

This entire article, but especially the latter four points are clearly relevant to housing concerns. Arguably, if a government implemented an enabling approach towards improving housing conditions, many health concerns would decrease and be prevented in the future. In this way of prioritizing the right to housing, many attributes of the right to health would also become more of a reality. At the same time, if an increasing emphasis were placed upon achieving health rights, many of the component elements of the right to adequate housing could be actualized.

5.11 The Right to Environmental Hygiene/Quality

Linked directly to both the right to housing and the right to health, the level of environmental hygiene or quality existing in human settlements will contribute to the establishment of adequate housing conditions. Side by side with the problems associated with poor health and housing are the multi-dimensional environmental problems which only worsen the situation. Indeed, the most environmentally unbalanced areas of urban centres in the developing world are often where most of the urban poor are forced by circumstance to live: beside polluting or hazardous industries, on hillsides prone to erosion or land slides, flood plains, rivers or streams overflowing with filth and sewage and so on. They are least likely to be evicted from such undesirable sites.

In legal terms, although the human right to environmental hygiene/quality does exist to some degree, this right remains underdeveloped. The CECSR enshrines the right to environmental hygiene in Article 12, yet in rather imprecise terms, whereas the AfCHPR is the only other human rights instrument which formally guarantees to Africans a "right to a general satisfactory environment favourable to their development." To a certain degree, elements of this right can be observed in Article 11 of the ESC, which in its guidelines for states' reports on the right to health, requests states parties to provide information on measures taken to reduce pollution.²⁷

Because so many of the health problems associated with inadequate shelter are environmentally based, an effective policy would be to focus greater attention and financial resources towards solving the environmental dilemmas so prevalent in slum settlements. Many of these measures would be of a service nature (piped water, sewers, drainage etc.) which are inherent elements of the right to housing. Thus one could argue that if more attention were paid to housing rights and needs, many of the environmental problems associated with them would diminish significantly. Furthermore, sustainable environmental policies aimed in this direction could also accomplish this. However the problem is perceived though, it is perfectly clear that many of the elements comprising the right to housing are also found within the emergent right to environmental quality.

5.12 The Right to Development

The right to development has been the subject of much debate in recent years, partly because the economic circumstances of many of the world's states are such that they deprive their inhabitants of many of their rights of all kinds, but partly also because some programmes for the economic development of such countries may themselves result in major violations of human rights and fundamental freedoms for those inhabitants.²⁸ After a number of years of work on the draft text and general definition of the right to development, a declaration on the

27) For instance, guidelines (3) for Article 11 requests information on: "General measures aimed in particular at the prevention of air or water pollution, protection from radioactive substances, noise abatement, food control, environmental hygiene ..." in Sieghart, p. 197.

28) See note 3, Section 2 notes, p. 375.

right to development was eventually adopted by the UNGA in late 1986. Within this comprehensive declaration, which brings together for the first time a concise instrument, some allusions are made to the express links between the right to housing and that of development. In addition to the often cited interdependence of all rights within the preamble and substantive realms of the declaration, it also declares the important element of popular participation in the context of development. For instance, Article 1 provides that "... the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized."²⁹ In more specific terms, Article 8 of this unique instrument provides a wide-ranging and positive re-affirmation of the right to housing. It provides:

"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 made with a view to eradicating social injustices. 2) States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights."

Thus, in addition to re-affirming the central place of housing in overall economic development, this article also lays down other crucial points such as equality of opportunity, the important role of women, economic and social reforms, the eradication of all social injustice and popular participation, all of which form the core elements of the right to development.

The provisions concerning state obligations are also noteworthy. For example, in Article 3 it is laid out that "... states have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development ..." While the following article enshrines that "... states have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development ..." Finally, in the last article it is stated that states should take steps "... to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislation and other measures at the national and international levels."

As this declaration was adopted by the overwhelming vote of 146 for, 1 against and 8 abstaining, the international consensus concerning this continually developing human right is apparent.³⁰ Yet although a relatively commendable definition of development is used within this text, and the state obligations at both the national and international level are comparatively precise for this expansive legal entitlement, the extent to which this declaration will be adhered to by states and the degree to which it will be prioritized remain to be seen. In a legal sense the declaration has some weak points such as the frequent use of the term "should" in place of the more obligatory "shall" and its status as a declaration. It is nevertheless of real significance to the international recognition and encouragement of the right to housing, among other rights.

In addition to this recent articulation of the right to development, the Bangui Charter (AICHR) is the only major human rights instrument which declares the evidence of this right in Article 22.

The encapsulation of basic needs, popular participation, equality of opportunity and so forth within the context of the right to development is a favourable occurrence in international human rights law. This approach towards development, based upon the indivisibility and interdependence of rights, signifies legal acceptance and affirmation of the concept of the permeability of rights. As such, the right to development can act, as a focal point towards committing governments to promote and act with this awareness of the notion of permeability in mind. Indeed, each of the rights discussed in this section relate both to the right to housing and development. Housing correlates distinctively to the right to development and to the unified and equal approach to the implementation of all human rights.

Thus, this section has revealed the links between the right to adequate housing and some other existing rights. We have observed how both views of the permeability of rights can poten-

29) See UNGA Resolution 41/128 of 4 December 1986.

30) Ibid., the US was the only state to cast a vote against this Resolution.

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tially contribute to the full realization of this right. Circumstances, location, and other factors will largely determine where and when one or the other approach may be warranted. However, it should be stressed that each approach is applicable and can be equally effective.

31) See Appendix 2.

Now that the rights to housing found at the international level and, to a lesser extent, at the national level have been delineated we can look at how these rights can be implemented, respected and ensured.³¹ The following sections will look at the implementation of the right to housing (section six), the determination of a violation of this right (section seven), the role that NGOs and community based organizations can play in monitoring and implementing this norm (section eight) and, finally, a tentative definition of the component parts of the right to housing applicable equally throughout the international community will be given.

Section Six

The Enforcement and Implementation of Housing Rights

The active enforcement of human rights in general, and housing rights in particular, is not an easy matter. In some cases it is relatively simple but, in most instances, there are difficulties. Many reasons contribute to this, not least of which is that the notion of state sovereignty is still the driving force behind international law. Although total sovereignty is no longer possible, viable or desirable, one still hears this argument when states are accused of violating human rights in their own country. Additionally, Article 2(7) of the UN Charter (although the strength of this article is also weakening) precludes UN interference in matters within the domestic jurisdiction of states. Nevertheless, these limitations are not nearly as powerful now as they were in the past and, as such, the UN annually calls upon specific states to halt human rights violations.

We must also grapple with the fact that economic, social and cultural rights are different from civil and political rights, yet equal in terms of status and importance. The latter category are generally (though not entirely) enforceable in a court, while some aspects of housing rights may be and others not. Yet, too many people who are unaware of the law do not perceive housing as a human right. This, however, is changing. One also frequently hears "international law is worthless, it's unenforceable ... you can't put a government in prison!" which holds a certain degree of truth. It is arguable that the reason why many states get away with so many human and housing rights violations is simply because far too few people in organizations know that these states actually have international obligations. In many cases states are simply not held accountable, at the international as well as the national level. It should be stressed that states, when confronted with their legal obligations and alleged violations of these, will not deny their legal obligations to house their citizens but will deny the allegations of abuse. A great deal of the validity of international human rights law rests with the reality that the enforcement of many of the norms will depend on how much embarrassment, public pressure and international condemnation a state is willing to take. Very often, these tactics persuade governments to change.

Moreover, we cannot make the mistake of assuming that international law, its procedures, norms, enforceability etc. are precisely the same as domestic legal systems. While many of the underlying principles of law are common to each, fundamental differences remain. Finally, it is rare (but it does occur) that international or regional human rights judicial bodies have the *legal* power to force a state to act in a certain way. Although the decisions, recommendations, suggestions etc. of these bodies may be legally binding, good faith by the government concerned rather than physical threat is the major force. Thus, the system is imperfect, as are all systems. One must be aware of the shortcomings of this legal system when engaging its various mechanisms and procedures. However, the system continues to develop in positive directions and, assuredly, in the sense of housing rights enforcement can be beneficial through intelligent use.

6.1 The Committee on Economic, Social and Cultural Rights

The body in charge of assisting the Economic and Social Council of the UN (ECOSOC) in monitoring states parties' compliance with their obligations under the CESCR is the Committee on Economic, Social and Cultural Rights.¹ Although the covenant entered into force in 1976, the committee only began its work in 1987.² Prior to the formation of this body, the monitoring of this instrument was carried out by the much criticized "Sessional Working Group" from 1979-1982 and thereafter by the "Sessional Working Group of Governmental Experts" from 1983-1986. After several years of rather dubious monitoring of the covenant, criticism from all sectors was so abundant that a new committee with more expertise, independence and a reviewed mandate was deemed necessary by the organs of the UN. At present the committee is composed of 18 independent "experts with recognized competence in the field of human rights, serving in their personal capacity."³ They meet annually for

1) See note 78, Section 3 notes, p. 332.

2) For a record of the first session of the committee see UN Docs. E/1987/28 and E/C.12/1987/5, Committee on Economic, Social and Cultural Rights, Report of the First Session, 9-27 March 1987, ECOSOC, Official Records, 1987, Supplement No. 17.

3) See ECOSOC Resolution 1985/17.

three weeks. The committee has a variety of tasks entrusted to it, as well as numerous challenges confronting it. Some of these, which pertain directly to the right to housing, would include:

- 1) the analysis of states' reports on Article 11(1) as required under Articles 16-22 of the CESC;R;
- 2) clarifying the content of the right to housing;
- 3) facilitating greater input from NGOs concerned with housing issues; and
- 4) developing improved levels of co-operation with the specialized agencies of the UN, particularly the ILO and WHO.

In more general terms, the committee will be challenged to instigate for itself more effective procedures and more efficient ways of carrying out their mandate, as well as attempting to shed the discouraging image passed on to it by its predecessors. Because of the primary significance of the covenant to the right to housing it will now be useful to discuss each of these four points in detail.

6.1.1 The Committee and States' Reports

The sole mechanism within the covenant designed to monitor compliance with this instrument is the reporting procedure. Due to the nature of the CESC;R, there are no means available for individual or inter-state complaints. Rather, under Article 16(1) states are to report "... on the measures which they have adopted and the progress made in achieving the observance of the rights recognized" in the covenant. This provision is supplemented by article 17(2) which provides that "reports may indicate factors and difficulties affecting the degree of fulfilment of obligations ...". States present reports every five years, including analyses of the measures taken to implement Articles 6-15.

In general terms the reporting procedure under the CESC;R has been replete with a diversity of problems. In addition to the inadequacy or insufficiency of information contained in many reports, many states have either been late in submitting their reports or have provided no report at all.⁴ Moreover, the examination of reports by the sessional working groups entrusted with monitoring them has been described, quite correctly, as being "... cursory, superficial and politicized ... It has neither established standards for evaluating reports nor reached any conclusions regarding its examination of reports".⁵ Indeed, unforgivable inadequacy was a central reason for the decision to establish the new and different committee. As is evident, therefore, one of the foremost responsibilities of the committee will be to encourage more meaningful reporting by states, as it is not the concept of reporting that is at fault. Effective reporting can create a good degree of dialogue between states and a monitoring body which, over time, can yield a relatively succinct impression as to the wherewithal possessed by states to fulfil their international legal obligations.⁶ Up until now, states parties have been given essentially a free reign to determine for themselves the type and manner of reports they decide to submit. This, in spite of guidelines issued to direct states towards a relatively balanced approach to reporting.⁷ Nevertheless, as Philip Alston, the rapporteur of the committee has pointed out, "... the preparation and submission of reports by states can serve a variety of potentially positive functions."⁸ Among these, he notes that reports can be a useful tool attempting to:

- 1) raise the consciousness of government officials by obliging them to undertake regularly a careful comparison of treaty obligations with domestic laws and practices;
- 2) facilitate principled decision-making by requiring the preparation of integrated statements of government policy in a given social or economic sector;
- 3) provide the basis for, and to stimulate the holding of, public debates as to the appropriateness of existing policies, by providing an opportunity for diverse sectors of society to make an input into, and perhaps to comment upon, the government's assessment of the situation;
- 4) provide the basis on which the relevant international supervisory organs can effectively monitor the extent of a state's compliance with its obligations;
- 5) provide a mechanism by which to develop a better understanding of the common problems faced by states and to identify the most appropriate means by which the international community might assist states to fulfil their obligations; and
- 6) reaffirm the credibility of the international implementation system by demonstrating

4) On this unfortunate situation see Westerbeek, Gerl, "Towards a System for Supervising States' Compliance with the right to Food" in *The Right to Food*. (Alston and Tomasevski eds, 1984) p. 129.

5) *Ibid.*, p. 125.

6) *Ibid.*

7) See Section 3.6.3, p. 44.

8) See note 78, Section 3 notes, pp. 356-7.

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9) Ibid.

that states cannot ignore their treaty obligations with impunity."⁹

These potentially positive functions show that it is certainly not the concept of reporting itself which is inherently to blame for the negative image of the monitoring procedures used under the CECSR. It is important to recall that reporting procedures are largely designed to facilitate dialogue and to supply important information - it is essentially a non-adversarial approach. This approach, in theory, was intended in part to inhibit reporting from being laden with highly general and often utopian sounding remarks implying that a state has perfectly implemented all of the rights under the covenant. However, if reporting procedures were viewed more along the lines of the six points noted above, this type of behaviour could be minimized substantially. This is, however, not to say that the committee, by applying a non-confrontational approach, should not be able at the same time to establish the existence of gross violations of housing rights and seek ways to rectify these compliance inadequacies.

10) Ibid., pp. 352-353.

Thus, the committee could attempt to reorganize the reporting procedures in such a way as to enhance the effectiveness of their role. For instance, the reformulation of the guidelines narrows the principal range of issues. This will, in turn, enable states to more easily identify "benchmarks" and minimum standards which they consider to be the base requirements for each right, as well as addressing the problems faced by the most disadvantaged groups within their societies.¹⁰ Among some of the guideline changes which have been incorporated are: the degree of urbanization in a country, with indications on the developments since the last report and future prospects; information on population growth and future prospects; the level of population considered to be living in inadequate shelter conditions as well as categories concerning the most disadvantaged sectors in society, for instance the totally homeless; the percentage of homes with access to adequate services; the percentage of people living in precarious situations, for example close to factories, polluting industries, or on flood plains; the situation regarding health centres, schools, employment opportunities etc.; legislation concerning protection against eviction; legislation on land expropriation and on the right to choose forms of social and community organization for building planning and use of materials; legislation aimed at preventing land speculation; legislation on land rights and the availability of land for low-income households; legislation on the prevention of discrimination in housing matters; the degree to which housing programmes have benefited the urban poor; the amount of foreign assistance and loans to be used for housing projects; an assessment of future needs of this type of aid and so forth.

Finally, the committee could also urge states to include in their reports those "factors and difficulties affecting the degree of fulfilment of obligations" contained in the covenant, as is requested in Article 17(2). This once again brings us back to the question of the non-adversarial approach taken by the committee and all bodies concerned with examining reports. The greater the degree of mutual trust between the committee and states, the more willing states will be to refer to the difficulties they have had in this respect.

The final point concerning states' reports deals with the follow-up of the examinations of these reports. One method by which the committee follows up a report consists of responses by state representatives to questions posed by members of the committee. One suggestion for improving this method is to designate one member or a small group of members to have responsibility for questioning governmental experts on specific rights. In this way, committee members would be in a better position to analyze effectively the degree to which a state has complied with their obligations. A second follow-up procedure consists of a "summary" of the consideration of each state's report, which is included in the annual report of the committee. These methods, however, do little to encourage states to take the action necessary for implementing those rights which have not as yet been implemented. Lastly, and most importantly for the right to housing, would be the adoption of a "general comment" on the right to housing which would clarify the position of the law as it concerns this right, as well as acting as a measurement from which to judge either compliance or non-compliance with a state's obligations. Every possibility exists that an attempt will be made to adopt such a comment at the committee's 1992 session.

6.1.2 Clarifying the Right to Housing

As was discussed in section three, determining the contents and thus clarifying a right is a tremendously important prerequisite to implementing these same rights. As we also noted,

11) *Ibid.*, p. 351.

12) This, of course, is with the notable exception of the right to food.

deriving the contents of the right to housing and many economic, social or cultural rights for that matter, is a far from easy task. In contrast to many of the norms found in instruments concerned with civil and political rights, there exists comparatively little domestic jurisprudence for the other set of rights. As Alston has stated "this is still the case today so that international lawyers seeking enlightenment as to the meaning of rights such as those pertaining to food, education, health care, clothing and shelter will find little guidance in national law."¹¹ Moreover, this task is also made difficult due to the failure of the international community to develop legal elaborations of any significance on many of the rights found in the CESCRC since its adoption in 1966.¹² Thus, the committee has a formidable task awaiting them. Nevertheless, several options are clear which, if utilized effectively by the committee, could result in a much greater understanding of the contents of the right to housing.

Because so little has been done in this regard up until now, one option open to the committee and the states parties to the covenant is to identify the main requirements of particular rights once they have been recognized. Obviously, if the contents of a right are not established, it will be practically impossible to enforce any given right. Each right must therefore have a minimum entitlement, without which a state party would be considered to be violating its obligations. There are several ways in which this can be accomplished. Firstly, states could be requested to tell the committee whether efforts have been made nationally to define the right to housing. Then, the committee could systematize their examination of reports with a view to deriving core requirements from this and also from the manner in which questions are asked of governmental representatives. Thirdly, the committee or individual members could prepare "general comments" on the right to housing, acceptable to all members, which could contain the core of the right to housing and other associated issues. As noted above, another option which could clarify the contents of the right to housing could be the appointment of one committee member to become a "expert" on this right and thus focus upon this right when consideration of states' reports is on the agenda. Notwithstanding which method is eventually chosen, it will greatly enhance the effectiveness of the committee, as well as creating more favourable legal conditions towards realizing the right to housing. By having a workable set of requirements as to the content of the right to housing, the committee will be in a much better position to analyze the states' reports, to question those state representatives presenting these reports and to devise ways in which greater respect for the right to housing can be attained.

6.1.3 NGO Input

It has been stated that "... the most glaringly inadequate aspect of the covenants' reporting and supervisory procedures is the fact that no provision is made for input to be received from NGOs."¹³ There were proposals for the inclusion of NGO participation during the drafting process, but these were voted down.¹⁴ Despite this, there is increasing room for NGOs to manoeuvre.

The desirability of NGO participation within the human rights bodies of the UN is unquestionable. Indeed, NGOs have been regularly participating in many of these bodies for years, particularly within the Sub-Commission for the Prevention and Against Discrimination of Minorities and the Commission on Human Rights. Although there is no mention of the role that these groups could play in monitoring or assisting in the implementation of the CESCRC, this is not necessarily surprising. For instance, neither the CCPR or CERD provide for the submission of information by NGOs. However, this lack of formal status has not prevented these organizations from providing information to the relevant committees. Indeed, without access to the valuable information which can be offered by NGOs, the credibility of the monitoring process is substantially diminished. It is a general rule that states cannot be expected to criticize themselves on their human rights record, especially in the eyes of the international community. NGOs can often provide sources of alternative information to monitoring bodies, as well as at least partially guaranteeing that governments are rigorously questioned about their measures for implementing their international legal obligations. In the case of the Committee on Economic, Social and Cultural Rights the role that NGOs could play is substantial because of the differences between NGO participation in this body as opposed to those bodies where an examination of civil and political rights takes place.

Firstly, there are a far greater number of NGOs which possess information on governmental

13) See note 78, Section 3 notes, p. 367.

14) *Ibid.*, p. 368.

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15) *Ibid.*, p. 370.

16) *Ibid.*

17) *Ibid.*

18) *Ibid.*

19) See note 2.

20) See note 78, Section 3 notes, pp. 363-366.

practices relating to economic, social and cultural matters than on questions relating to classical human rights. Moreover, while information concerning violations of civil and political rights is often presented in an adversarial fashion, information about rights such as the right to housing can often be presented in a less confrontational manner. Thus, as the rapporteur of the committee has argued: "States should not entertain the same reservations about allowing NGO access to the new committee as they apparently do with respect to other bodies."¹⁵ Another point is that, whereas other monitoring bodies of human rights instruments normally derive their existence from the treaty itself, the committee has the task of assisting ECOSOC with the monitoring of the covenant.¹⁶ Stemming from this, ECOSOC has the ability to define its own mandate not being bound by the provisions of the covenant in this regard, thus, returning to NGO access to the committee. Two strong legal arguments seem to support this. First, Article 71 of the UN Charter authorizes the council to "... make suitable arrangements for consultation with NGOs which are concerned with matters within its competence."¹⁷ And secondly, these arrangements have been laid out in ECOSOC Resolution 1296(XLIV), in which the desirability of NGO participation "for the purpose of enabling the council or one of its bodies to secure expert information or advice from organizations having special competence and to enable organizations which represent important elements of public opinion in a large number of countries to express their views", is enshrined.¹⁸ As such, NGOs are legally capable of forwarding written submissions to the committee, pertinent to its work. This resolution probably would enable NGOs to make oral presentations as well. In spite of this though, one of the topics which attracted a great deal of heated debate during the first session of the committee concerned the role of NGOs.¹⁹ Nevertheless, several written submissions were sent to the committee for its consideration in their second session in 1988. One submission by Habitat International Coalition (HIC) requested the committee to appropriately reorient the guidelines for states' reports, to request states parties to report upon measures they have undertaken to assist community based organizations in realizing the right to housing for their constituents and to look into the question of mass forced evictions. The committee did not measurably act upon this statement by HIC, merely stating in their report of 1988 that "... several NGOs in consultative status had submitted written statements at its second session and that these had assisted the committee in its work."²⁰

However, since 1989 and the Committee's third session, HIC has had increasing success in encouraging the Committee to undertake positive actions concerning housing rights. Due to pressure from HIC, the Committee has, among other things:

- 1) re-orientated the guidelines on housing rights to much more adequately reflect the true concerns of this right;
- 2) held a "general discussion" on housing rights during its 4th session (1990), at which HIC was asked to make an oral submission;
- 3) continued to ask more forceful questions to Governments appearing before them on both housing rights in general, and evictions in particular; and
- 4) declared one State to be in violation of the Covenant and housing rights obligations due to mass evictions in the country (Dominican Republic).

6.1.4 The Specialized Agencies

In Articles 18 to 22 of the covenant, provisions have been made concerning the role of the specialized agencies and the Commission on Human Rights in the implementation of this important text. In Article 18 ECOSOC "... may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present covenant falling within the scope of their activities." Whereas Article 20 declares that "... the specialized agencies concerned may submit comments to the ECOSOC on any general recommendations under Article 19." This latter article establishes the potential role of the Commission on Human Rights by providing that the ECOSOC may transmit to the commission for study and general recommendation states' reports required under the CESC.R.

Yet, despite the potential of these bodies, the record so far has been generally poor. Of the specialized agencies, the ILO, WHO, FAO and UNESCO, only the ILO has made a substantial and comprehensive contribution towards assisting with the implementation of the CESC.R. However, even these contributions have varied considerably over the last ten years. With regard to the ILO's participation in this area, Alston has purported that the ILO "... by

virtue of its extensive body of detailed standards, its long experience and its sophisticated supervisory machinery is best placed to make a crucial contribution to implementation of the covenant, but has become somewhat disillusioned by the very low rate of return which its past efforts have produced." This is, of course, disheartening particularly in view of the potential role which could be played by the UN Commission on Human Settlements through the ILO, in strengthening the monitoring procedures. Because the ILO is capable, through the Committee of Experts on the Application of Conventions and Recommendations and other bodies, of submitting reports regarding the implementation of the covenant related to their mandate, their role regarding housing rights could constitute an important contribution. As a 1987 resolution by the International Labour Conference instructs the Director-General of the ILO to, *inter alia*, "... strengthen working relationships and co-ordination between the ILO and other UN agencies concerned with worker's housing, especially the UN Centre for Human Settlements, in conformity with the Memorandum of Understanding signed in 1983 concerning co-operation between the two organizations," it seems possible that the ILO certainly has the option to forward reports, following consultation with the UNCHS on the compliance of states with their obligations towards the right to housing in Article 11(1).

In terms of the role of the Commission on Human Rights in the monitoring process of the CESCR, the record is not much better. In fact, although Article 19 enables ECOSOC (the body to whom the commission is responsible) to transmit states' reports to the commission for study and general recommendations, this has yet to be done. As such, no recommendations have been made in this way by the commission. Thus, in spite of the commission itself asserting that its role in implementing the covenant would be an important one and that it expressed a strong willingness to assist the ECOSOC in accordance with Article 19 immediately following the entrance into force of the covenant in 1976, nothing has really emerged.²¹ Therefore, "... the commission's already overcrowded agenda, its general failure to take economic, social and cultural rights very seriously and the undoubted need for specialist expertise in monitoring such rights would all seem to confirm the wisdom of that approach now that the committee has been given the principal responsibility."²²

Thus, the historical practice of the specialized agencies, with the occasional exception of the ILO and the non-direct involvement of the Commission on Human Rights gives no indication of optimism for the future. It is hoped however, that the committee will attempt to encourage the agencies and the commission to act as their expertise and experience could be of enormous use to the committee, both in terms of supervision as well as a better clarification of the right to housing. Although the committee has not yet achieved great success concerning housing rights, in many ways this is the most important body at the international level which actually monitors compliance and/or non-compliance with this legal duty. The room for manoeuvrability by NGOs and community based organizations within the committee is increasing and the amount which could be done by these groups is a good deal more than history suggests. If NGOs concerned with housing rights can develop a good relationship with the committee, it is likely that the work of this body vis-a-vis housing rights can produce results.

6.2 Complaints and Communications

In addition to the role of the Committee on Economic, Social and Cultural Rights in implementing the right to housing at the international level, there are several other organs entrusted with the monitoring and supervision of human rights instruments which could be of potential use to victims claiming violations of their rights to housing. Such procedures are apparent within the ILO (concerning "representations" and "complaints" and being monitored by the Committee of Experts on the Application of Conventions and Recommendations); the OAS (concerning communications and being monitored by the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights); the OAU (concerning communications and being monitored by the African Commission on Human and Peoples' Rights); and the Council of Europe (concerning communications and being monitored by the European Commission on Human Rights and the European Court on Human Rights).²³ Moreover, under several international treaties, monitoring bodies have been created. This is the case under the CCPR with the Human Rights Committee and under the CERD with the Committee on the Elimination of Racial Discrimination. Each of these bodies possesses detailed mandates and functions towards ensuring compliance with international human rights instruments. As the differences between these various bodies are substantial, space

21) *Ibid.*, p. 344.

22) *Ibid.*, pp. 344-345.

23) See *Guide to International Human Rights Law Practice* ed. Hannum, Hurst, University of Pennsylvania Press, 1984, for detailed descriptions of these various procedures.

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constraints do not allow a detailed overview here. However, some general remarks can be made which will give some impression of the potential worth of these bodies in terms of the right to housing.

First most of these organs are entrusted with monitoring states' reports under the specific instruments which are forwarded by states and contain the various measures they have undertaken in order to fulfil their legal obligations concerning the rights found in any particular instrument. This is the case in the ILO, the OAS, the OAU, the CCPR and CERD. Although this is not always carried through with great zeal, these bodies can assist states with any problems they may have in implementing their duties, based upon examination of these reports.

Secondly, many of these organs have the mandate to receive individual and group complaints alleging violations by states of their rights under a certain treaty. This is the case with all of the above examples. In some cases, such as under the CCPR, the ECHR and the CERD states must, in addition to ratifying the treaty concerned, also declare recognition of the monitoring body's right to receive individual complaints. In some instances, such as for the OAS, OAU and the ILO, no formal declaration is required. If it is legally possible for a complaint to be brought by an individual or group of individuals, the standard practice is that several admissibility requirements must be satisfied before the monitoring body involved will accept the case. The most important of these are the exhaustion of local legal remedies for the case, the compatibility of the complaint with the norms found in the relevant instrument, the fact that the submission must normally not be anonymous, must be in writing and so on. In some cases these requirements are quite strict, such as under the ECHR, whereas in other instances they are less restrictive, for instance under the ILO.

Additionally, all of these organs have the mandate, which in some cases requires a special declaration of competence, to receive inter-state complaints. These consist of formal complaints by one state against another alleging non-compliance by the latter state of any norm or norms found within a treaty to which both states are states parties. However, in terms of the right to housing it is unlikely that any such complaint would be filed.²⁴

In general terms, the filing of a communication, complaint or petition to one of the aforementioned organs signifies a final resort to justice. Indeed, the vast majority of legal work and enforcement of obligations must be done at the national level. Nevertheless, if national systems of law do not give satisfaction to a victim of violation, at least other options exist at the international level. The main importance of these various procedural options in terms of the right to housing is the potential role they can play towards obtaining compliance with civil and political rights. As such, they can be potentially useful in the quest for housing rights with regard to many of the rights discussed in Section five, the permeability of rights. Should the necessity arise for such a communication, care should be taken and legal consultations would be highly recommended prior to an actual submission thereof.

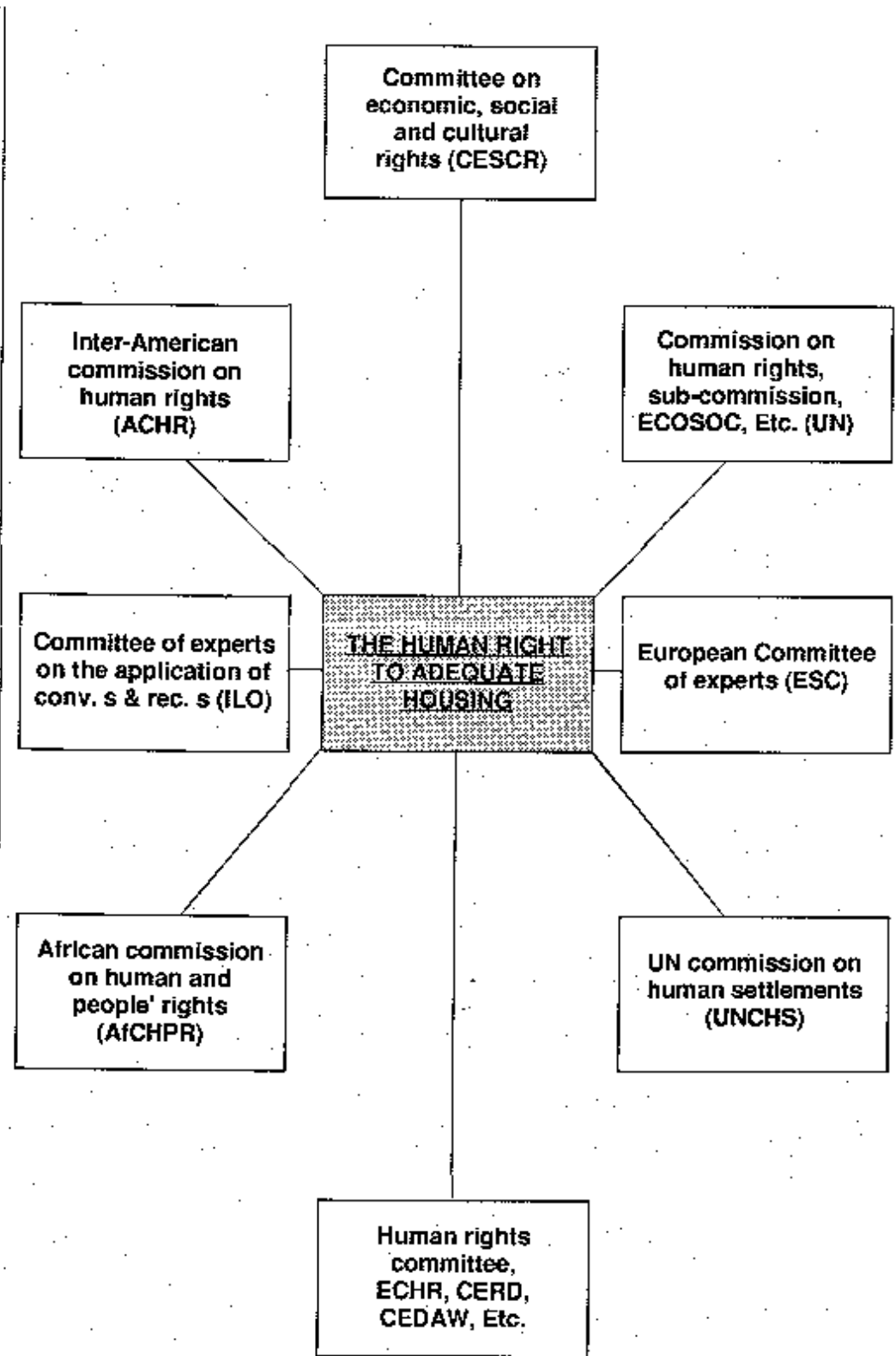
6.3 UN Organs and Bodies

In addition to the various legal procedures just noted, a number of other UN organs could also be utilized by housing rights advocates. In many ways these are preferable to the more confrontational aspects of those procedures where complaints can be put forward. In the human rights context, ECOSOC, the Commission on Human Rights and the Sub-Commission are the main bodies. Whereas the Commission on Human Settlements and other various UN organs could also play a supplementary role. Each of these provide direct access to NGOs, thereby enhancing their prospective assistance with the question of housing rights.

6.3.1 The Economic and Social Council (ECOSOC)

The Economic and Social Council derives its existence from Chapter X of the UN Charter, being composed of 27 UN member states. It is the parent body of the Commission on Human Rights and is generally empowered to "... make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all." Although the Commission on Human Rights and the Sub-Commission carry out most of the work concerning human rights, the ECOSOC itself has additional roles which are pertinent

24) For a detailed analysis of the inter-state complaint procedure, see Leckie, Scott, "The Inter-state Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?" In *Human Rights Quarterly*, May 1998.



25) See Articles 16(2), 21 and 22 of the CESCR for the functions of ECOSOC regarding the implementation of this instrument.

to the realization of the right to housing. This is particularly true with regard to states' reports under the CESCR, under which instrument, ECOSOC possesses a variety of functions.²⁵ Despite these many options, however, the ECOSOC has been slow in actually fulfilling them. As shown in Section 3.1.2, the ECOSOC has been forthcoming with resolutions concerning housing rights and every attempt should be made by NGOs to encourage them to continue in this direction, as well as urging this body to become more active in its monitoring of states' reports under the CESCR.

6.3.2 The Commission on Human Rights

Section 3.1.2 revealed some recent commission initiatives regarding the right to housing as

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a result of the IYSH. However, with the exception of the resolutions on the realization of the right to housing of 1986 and 1987, this inter-governmental body has been essentially, ineffective in specific terms concerning the right to adequate housing. Nonetheless, NGOs with consultative status could urge the following action:

- 1) the adoption of resolutions containing delineations of housing rights, rather than merely reaffirmations of this right, and resolutions condemning mass forced evictions;
- 2) the coverage of the right to housing by the commission's working groups on the right to development, the rights of the child and the rights of minorities;
- 3) undertaking of studies and recommendations on any states' reports submitted to them by ECOSOC which concern Articles 10-12 of the CESCR and they should urge the ECOSOC to begin this practice; and other initiatives in this direction.

There are a variety of means at the disposal of NGOs which can be used to pressurize the commission into undertaking more positive action. Written submissions can be sent to the commission concerning any relevant element of the right to housing or human rights in general.²⁶ If an NGO is present at sessions of this body they can give oral submissions on the right to housing in a more detailed manner than is normally the case with written ones. Moreover, if an NGO is present, a perfect opportunity exists for the convening of informal workshops on the right to housing to which members of the commission and other states could be invited. Frequent lobbying of commission members could also take place in and around the commission's meetings. These few examples are illustrative of the many ways in which NGOs can attempt to shape the agenda and action of the commission in an attempt to bring the right to housing into clearer focus at this level. If NGOs are not present at the commission, in the interests of pragmatism it must be stated that it is unlikely that this body will devote more attention to this right, especially when the IYSH begins to fade.

26) See Appendix III.

6.3.3 The Sub-Commission on Prevention of Discrimination and Protection of Minorities

Since the early 1980s the Sub-Commission has shown an increased interest in economic, social and cultural rights. In their 1988 session this body appointed a special rapporteur to carry out a detailed "study of the problems, policies and progressive measures relating to a more effective realization of economic, social and cultural rights", which is to be completed in 1992. The preliminary report (1989) of the Special Rapporteur noted that further work on the area of standard-setting with regard to the right to housing needed to be carried out by the UN, whereas the First Progress Report (1990) dedicated five pages specifically to the right to adequate housing (E/CN.4/Sub.2/1990/19); this represents one of the most detailed pronouncements on this right to date by a UN human rights body. This and other developments within this organ reveal, at least on the theoretical plane, their potential vis-à-vis the right to housing.

In specific terms, NGOs concerned with housing matters should be a regular presence at the meetings of the Sub-Commission. In this way, housing rights advocates could urge this body to devote more attention to this area of the law. As such, encouragement could be given including:

- 1) the appointment of a special rapporteur on the right to housing, with a mandate similar to that of the study on the right to food;
- 2) the adoption of substantial and comprehensive resolutions on this right;
- 3) the creation of a working group on the right to housing; and
- 4) the serious consideration of including coverage under the 1503 procedure of gross and systematic violations of universally recognized rights to adequate housing.

While the worth of these initiatives is unquestionable, (provided they are carried out appropriately) once again it is unlikely that the Sub-Commission will decide to do these things without regular pressure being exerted by NGOs.

6.3.4 The Commission on Human Settlements

The Commission on Human Settlements is an inter-governmental organization consisting of

27) UNCHS Doc GSS 2000
states....

58 states which aims to make states more aware of the problems of human settlements and to encourage greater inter-national co-operation in this regard. Although the commission has yet to seriously consider the question of housing in terms of human rights, it certainly has a role to play in this area.²⁷ Because of its technical concerns the commission, can assist in determining the contents of the right to housing among other things. As NGOs have access to this body, several requests could be made to the commission in an attempt to steer them more in the direction of the right to adequate housing.

For instance, NGOs could urge the commission to send a representative to sessions of the Committee on Economic, Social and Cultural Rights in order to enhance the level of expertise within this body concerning the many important elements of housing needs and rights. If this were not deemed feasible, the commission could, at the very least, send written reports on the status of human settlements around the world and their problems, with a view to assisting the committee in their analysis of the right to housing in general, and in particular during their examination of individual state's reports on this issue. Another idea would be for the commission or HABITAT to open up a section concerned with housing and human settlements in human rights terms. This would enable the international coverage of housing rights at the inter-governmental level and could assist in the implementation of these rights. At the very least NGOs could urge the commission, as well as HABITAT, to begin incorporating housing rights into their mandate.

6.3.5 Other UN Organs

Finally, it should be noted that a number of other UN agencies and organs could potentially play a role in the implementation of housing rights. These would include the UNDP, UNEP, FAO, WHO, UNICEF, the World Food Programme, as well as international financial institutions such as the World Bank and others. Each of these institutions possesses mandates enabling them to increase respect for housing rights. While we cannot go into detail about these organs, suffice it to say that NGOs should keep these and other bodies in mind when attempting to realize housing rights throughout the world.

Now that the various international procedural and institutional options have been briefly discussed in terms of their role in assisting in the implementation of housing rights, the next section will look at what types of state action and omissions could be considered as violating the right to housing as it now exists within international human rights law.

Section Seven

What Could Constitute a Violation of the Right to Housing?

Determining whether or not a right to housing has been violated is a rather complex task. It can be approached from the vantage point of one specific legal text wherein the right is found along side obligations to fulfil this same right. Another method of discerning compliance or non-compliance with obligations to implement and respect the right to housing could focus upon the overall characteristics of the right in all of its formulations. This perspective will be undertaken in this section due to the comprehensive coverage given so far of the right to housing within international and national laws. As has been made clear in the sections preceding this one, every right possesses corresponding duties or obligations on behalf of some entity (usually the state) to undertake measures aiming towards the implementation of the right. Thus, in order to determine the degree to which a state has complied with any obligation relating to the right to housing, we must first identify those obligations. This was done in detailed terms in section 3 with regard to the right to housing found in article 11(1) of the CESCR, and to a lesser degree with some of the other manifestations of this right. We have additionally examined some of the contents of the right to housing to varying degrees. Therefore, with the obligations and content of the right relatively clear, we are in a good position to determine what would constitute a violation of this right, albeit in general terms.

Because delineating the duties of states towards the right to housing is somewhat easier than defining the precise contents of this right, the question of non-compliance is better approached from the angle of obligations. Also as so little research has been carried out regarding the right to housing and its subsequent duty-holders, much of the following analysis is based upon previous work carried out concerning the right to food, by such authorities as Alston and Eide.¹ A common theme of the research surrounding the implementation of the right to food is focused upon the concept of "levels of obligation". These are often divided into the obligations to respect, protect, ensure and promote. Due to the many similarities between this right and the under-developed right to housing, these levels of obligation are also applicable to the latter. Obviously, if non-compliance has taken place, the various means of redress and enforcement mentioned in section 6 can be brought into play. Such a determination, of course, can also be used in a non-confrontational approach towards the government concerned, with a view to combatting the practices leading to such situations.

Because of the insufficiency of normative interpretations of the right to housing perceived comprehensively, the operationalization of these rights in order to discern to what extent their realization can be monitored and degrees of their observance supplied by empirical evidence, it is subsequently difficult to find out whether non-compliance has occurred. To a certain degree, analyses of national constitutional and legislative enactments can lead to a better understanding of these normative standards. However, relying upon legal sources of rights will rarely provide sufficient data relevant to determining compliance with housing rights. These problems confront most, if not all, economic, social and cultural rights and as such, several methods have been devised to overcome this dilemma, such as the levels of obligations just noted. The most useful delineation of duties has been devised by Tomasevski who has divided these into:

- 1) the obligation to recognize or to respect;
- 2) the obligation to promote;
- 3) the obligation to protect; and
- 4) the obligation to fulfil or ensure.

Therefore, the following discussion will correspond to each of these levels of state duty regarding the right to housing. Using this approach will enable us to discern simultaneously the obligations necessary for the realization of the right to housing and those practices and policies which might constitute violations of these various duties.

1) See, inter alia, See note 13, Section 3 notes; note 15, Section 2 notes and note 14, Section 3 notes.

7.1 The Obligation to Recognize and Respect

The first basic obligation, that of recognition of the right to housing, would include the ratification of and adherence to any human rights instrument containing the right to housing. This would entail all of the instruments mentioned throughout this report, especially the CÉCSR. Although the obligation to ratify cannot be derived from international human rights law, it remains the most basic step a state can take in legally addressing housing needs. Moreover, those texts containing derivations of housing rights or rights permeable with this norm should also be ratified. When revisions of an instrument (e.g. ILO Recommendation 115) or when amendments or protocols are envisioned for existing texts, this obligation might, by implication, oblige states to ensure that housing rights, where appropriate, are enshrined therein and that they are delineated in a sufficient fashion.

At a somewhat deeper level, the obligation to recognize might involve the incorporation of the provisions of any ratified text containing housing rights into national law, and/or by the introduction of the right to housing into constitutionally guaranteed human rights. (See Section 4.4).

With regard to the obligation to respect the right to housing, governments would be forbidden from acting in any way which would directly encroach upon these recognized rights. For instance, states confronted with slum and squatter settlements would be prohibited from forcibly evicting these dwellers without providing alternative and acceptable places of residence, adequate warning beforehand, judicial access or sufficient compensation. If these conditions were not met during any "resettlement" or eviction programme a violation will have taken place. Another instance of the duty to respect is whereby a state initiates a housing programme or slum/squatter settlement upgrading scheme, all those in need of such programmes should have equal access to the benefits. This might not imply that the right to housing be effectuated for all people simultaneously, but rather that this distribution of housing resources must be based on criteria which are not discriminatory in any way whatsoever. Of course, these few examples are only illustrative of these two particular state duties.

7.2 The Obligation to Promote

The obligation of promotion entails both legal and policy initiatives. On the legal side, this requirement would include, in addition to those initiatives in the previous section, the enactment of appropriate national legislation leading towards the progressive realization of this right. This involves complicated issues and policy decisions which will invariably differ from state to state. Nevertheless, in general terms states could adopt specific legislative measures aiming towards more equal access to housing resources, a more equitable distribution of land and property, recognition of the legal rights of slum dwellers and squatters by means of, *inter alia*, tenure legalization, enhancing relations based on the rule of law and justice between tenants and landlords and landowners, more accessible and reasonable housing prices, increasing legal emphasis on component rights to health, privacy, of women and so forth. Furthermore, this obligation requires states to repeal or appropriately amend legislation which does not conform with the right to housing. These might include excessive and oppressive legal regulations imposed on the urban poor or the legal tolerance of speculation. Once again these various measures are only illustrative of what should be done.

In terms of policy requirements relevant to the obligation of promotion, a first step would involve the incorporation of the right to housing into the end goals of development initiatives by adopting a national housing policy leading towards adequate housing for all. This would involve the establishment of policy targets aiming at the progressive realization of this right within development plans categorized, according to the immediate availability of resources, into levels of implementation. For example:

Level 1: A major commitment to slum and squatter settlement upgrading and site and service schemes through appropriately designed enabling approaches; focusing upon the general improvement of standards of housing and human settlements throughout a given country.

Level 2: The eradication of abject homelessness; the inclusion and identification of target groups; the adoption of appropriate measures for the eventual elimination of an unregulated land market which allows for speculation and which prohibits improvements in housing and

2) Tomasevski, K., "Human Rights Indicators: The Right to Food as a Test Case" in *The Right to Food*, (Aiston and Tomasevski eds. 1984) pp. 135-167.

shelter conditions.

Level 3: The assurance of adequate housing and services for all including the creation of a system of guarantees with full and immediate applicability to the right to housing, along with the availability of complaint and other remedial procedures under the law.²

7.3 The Obligation to Protect

This obligation entails the duty of the state to refrain from any act which might result in the deprivation of adequate shelter for citizens. The state would be required to enact and enforce prohibitions of activities resulting in the denial of housing and/or the impossibility of the realization of this right. The protection of the right to housing would also include the establishment of mechanisms for the supervision of compliance with any obligations undertaken. These should be based upon both legal and policy decisions carried out by a state. The state should additionally establish entities to monitor the realization of the right to housing such as a housing ministry or a sub-department within a ministry. Without the eventual actualization of each of these obligations, a state could be considered to be in non-compliance with its legal obligations vis-a-vis housing rights.

7.4 The Obligation to Fulfil and Ensure

Lastly, the duties of fulfilment and ensurance includes interventionary policies and measures necessary to provide for the needs of those people who are unable to do so for reasons beyond their control. This would require a state to utilize measures such as giving subsidies, tax exemptions, low-interest credit etc. thereby making it easier for people to acquire adequate shelter. Community based organizations and NGOs should be included under this obligation through the support by states of enabling policies by which financial and legal assistance is provided to these groups. Although the indispensable nature of these obligations is self-evident, they must be considered to be a supplementary, exceptional means for the actualization of housing rights. This is because such policies can frequently create or strengthen dependency at the expense of self-reliance. The ultimate objective of provisions relating to the right to housing is the elimination of the obligation to fulfil, and a conceptualization of the right to housing as system of guarantees to equal access to resources, including guarantees of freedom, so that every individual is enabled to provide for his or her own needs.³

3) Ibid.

Each of these obligations can, in one way or another, be translated into terms which allow the relative determination of non-compliance or compliance with duties towards the right to housing. These will vary from state to state and from legal text to legal text. In spite of these necessary derivations, the important point is that these obligations and their converse violations, are applicable throughout the international community. While each national housing rights network and other concerned groups will unquestionably have to integrate these and similar legal points into their mandates, this section provides a basis from which to begin working on the issue of determining whether a violation of the right to housing has occurred and what can be done to rectify these inadequacies. What has been outlined here is, of course, only a beginning in the general quest towards clarifying housing rights norms. A great deal of effort will be required by actors from the local to the international level prior to the emergence of a consensus as to what could be legally pronounced to be violations of the individual right to housing. Many of these efforts will take place at the inter-governmental level. However, the potential roles of NGOs and community based organizations in this and other aspects of this right are greater than has been conventionally perceived. It is to this issue which we will now turn.

Section Eight

The Role of NGOs and Community Based Organizations

The central perspective in this analysis of the right to housing has not been purely theoretical. The aim has been to reveal the status of the law with a view to utilizing these legal standards to realize the right to adequate housing for all. Without question, NGOs and community based organizations are the best equipped organizations for pursuing the implementation of such rights by urging governments to fulfil their legal obligations to ensure them. Thus, while specific recommendations concerning the ways in which these groups can utilize the international legal and political procedures designated to monitor instruments containing the rights to housing will be discussed at the end of this report, this section will concentrate on the more general means by which NGOs and community based organizations can assist in fully actualizing the right to housing.

When considering the right to housing and the role of non-governmental groups, the foremost concern is for these organizations to begin seeing the question of housing in legal terms, and not only as a social or political issue. Some of the advantages offered by a right to housing approach (developed by Alston on the right to food) include the following:

- 1) It serves to underline the ethical/moral discussions of areas which are often portrayed as exclusively technical matters.
- 2) By approaching the problem from the perspective of a human rights framework, as defined by international legal obligations which governments have already accepted, it may be easier to rebut the unjustified but widespread assumption that there exists at present no accepted normative framework relevant to national and international housing policy-making.
- 3) Spurious rights which are often deemed to have priority - such as the absolute right to private property; the right to unfettered freedom of choice; the right to contract freely; the right to open competition - are exposed for what they are worth in the overall human rights framework. Macro-economic considerations such as balance of payment problems, export-led growth strategies, economic stabilization programmes or laissez-faire world trade policies are also put into an appropriate perspective.
- 4) In matters of housing policy the burden of proof is shifted from those claiming assistance to those in a position to provide it and from those calling for fundamental structural changes to those who benefit from the *status quo* and thus reject the need for change.
- 5) The barriers of state sovereignty and domestic jurisdiction are significantly lowered (although by no means dissolved) and some aspects of issues such as internal equality or the obligations of states to provide aid or support necessary reforms, become legitimate issues on the international agenda.
- 6) The accountability of governments and of international organizations, in terms of the impact of their policies and programmes on the enjoyment of the right to housing, is emphasized.¹⁾

1) See note 14, Section 3 notes, p. 61.

In these respects, internationally oriented NGOs, which are generally better endowed financially and which sometimes have greater scope in their endeavours, can play a tantamount role. They can sponsor or undertake studies and research focusing upon the status of housing rights throughout the world and thereby define the parameters of available action. Thus, while NGOs can be effective at the international level, community based organizations have the direct responsibility vis-a-vis the actualization of housing rights at the national and local levels. Once these groups have integrated the notion of legal rights to housing into their mandates, there are numerous initiatives and activities they can begin. Initially, of course, they must discern (if necessary with the assistance of lawyers) whether such a right exists in the national law of the state concerned or if that state possesses international legal obligations in this respect. If such governmental duties are not found to exist, the obvious task is to encourage or even entice these governments to adopt such legislation domestically. At the same time, community based organizations and NGOs can try to secure recognition of housing rights by urging the state to ratify international human rights instruments which contain this right(s), such as the CESCR and others.

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The existence of a right to housing enables people to demand that governmental bodies address practices and policies which contribute to the denial of these rights. However, it cannot be solely up to the government to define the scope of this essential set of needs; it must be developed by those who most urgently need it, in collaboration with the state. Notwithstanding whether a state has legal obligations to promote, respect and ensure housing rights, a great deal of activity can take place, sponsored by community based organizations leading towards a discussion of the necessary components of housing rights. The task for community based organizations in this sense is to work with affected groups, in different settings, to identify those particular practices which inhibit the realization of this right. Several obvious practices that could be identified would be mass forced evictions, demolition of existing dwellings, enforcing unrealistically stringent housing and land regulations, not enforcing environmental laws prohibiting various forms of industrial pollution (especially when these are sited near to human settlements), allowing empty land to be unused in spite of a clear and actual need for such urban space, spending an inordinate amount of available public funds destined for settlement improvement on luxury and unaffordable buildings, and the tolerance of any form of discrimination in the allocation of housing.

Where these and other practices demonstrably threaten the needs of those without adequate shelter, they can be put right, or attempted to be put right by various corrective measures. Community based organizations, in active consultation with their constituents and supportive lawyers, can provide people with the understanding that they possess rights to protect themselves from any of the current deprivations facing them. Through this process they can identify the policies and practices which significantly impair these basic rights; they can identify appropriate legal measures to prevent these wrongful practices from reoccurring; and they can assert their right to demand this legal protection in order to vindicate their basic right to housing.²

2) See note 1, Section 4 notes, pp. 207-208.

Once community based organizations and individuals begin to identify legal measures needed to implement the right to housing, a variety of strategies can be used to demand them. Naturally, the particular strategies used in any one country must be determined by the collaboration of concerned groups and geared to the conditions that exist and other factors which define housing problems in a particular nation.³ One possible method of developing these strategies could be the formulation of a national network, a working group on housing rights or a coordinating body dedicated to focusing attention on the legal issues associated with the right to housing, for example as the National Campaign for Housing Rights in India. Diaz and Paul have suggested a variety of activities which could be undertaken by such a movement. These include:

3) Ibid.

- 1) Promotional activities to familiarize people with their rights. Each group might prepare appropriate material drawing attention to the human right to housing and other human rights law, both international and national, which bears on the right of people to participate in activities to secure their right to housing, and particularly the right of victim groups to participate in these processes.
- 2) Critiques of national policies and practices dealing with housing construction and allocation. Groups might prepare documents identifying practices which are clearly harming or threatening particular communities or sectors of the population, e.g. documents exposing discrimination in the allocation of housing resources by officers or exposing expropriation of land on which dwellings have been constructed.
- 3) National charters of housing rights might be developed, setting out in detail some of the component rights being claimed and the ways in which these rights can be protected, and steps people can take to demand protective measures.
- 4) Codes of conduct could be drafted and publicized and directed at people in agencies and firms which should be particularly sensitized to housing issues by virtue of the power they wield over systems of construction or allocation.⁴

4) Ibid.

While these examples of possible national initiatives for community based organizations and NGOs are crucial, several initiatives could be undertaken at the international level as well. Again, based partially on the work of Diaz and Paul, NGOs and community based organizations might do the following:

- 1) Invoke the right to housing in international forums including the International Committee on Economic, Social and Cultural Rights, The Committee of Experts within the ILO, The Inter-American Commission on Human Rights, the African Commission on Human and

Peoples' Rights, the UN Commission on Human Rights and others. Some existing national practices related to housing might be such as to warrant the presentation of new test cases before international judicial bodies designed to vindicate the right to housing. Other cases could be challenged before administrative or legislative bodies. Protests might be lodged with international bodies less legally inclined, such as the Commission on Human Settlements of the UN, with the basic purpose, dramatizing demands for legal measures to protect peoples' rights to adequate housing.

- 2) Critiques of states' reports required by states parties to human rights instruments such as the CESC, ILO Convention 117, the ESC and the envisioned protocol to the ACHR. A national network on housing rights could regularly subject every state report on housing rights and/or elements thereof to close scrutiny and could widely publish their findings. Such a network could also encourage their national governments to allow them to participate in the drafting of these national reports. Such practices already exist in Norway, Italy and Bulgaria and are being considered in the Netherlands. Accordingly, the Limburg principles provide in Principle 72 that "states parties are encouraged to examine the possibility of involving NGOs in the preparation of their reports." Moreover, community based organizations and NGOs could, prior to the publication of a state's report, develop alternative reports based upon the same guidelines. This strategy may also help put pressure on governments to take these rights more seriously.

Of course, these examples are only illustrative of the various initiatives that these groups could undertake.

8.1 Utilizing and Acquiring the Necessary Information

Community based organizations and NGOs in the human settlements field wishing to use human rights to mobilize action against inadequate shelter conditions will obviously have to go further than simply making general statements on the issue. While these are crucial, a more difficult task involves informing people of their right to housing, how they can develop and use it, and how to take appropriate measures to realize this right.

Fulfilling these tasks is not easy, often due to the lack of an effective inter-disciplinary network of activists for the poor, including social scientists, human rights proponents, lawyers, health advocates and other interested groups. Frequently, these various experts fail to appreciate their potential role as human rights activists, with knowledge which could be used to develop legal resources to protect the right to housing. Thus, because of the complexities associated with human settlements and the right to housing, any strategies by NGOs and community based organizations to demand respect of and ensure component rights to housing will require efforts to integrate and co-ordinate the information from each of these groups. This knowledge can, in turn, be generated from all levels; grassroots, nationally and internationally. Should a national (or international) network exist, it can draw on the knowledge and perspectives of these bodies and thereby identify ways of developing legal and other measures targeted at those responsible for violations of housing rights. This information can then be marshalled and used to initiate periodic national reviews which would: a) identify violators of the rights to housing; such as apathetic ministries, urban planners, multi-national corporations, international financial institutions, landowners etc; b) identify victims of these practices; c) identify research institutions which could be drawn into a network of human rights activism on issues relating to the right to housing; and d) identify remedial measures to protect people's rights to housing in the context involved.⁵

5) Ibid.

Such national reviews can then be used by other important bodies in society such as journalists, teachers, activists etc. in campaigns to educate and dramatize the need to recognize everyone's right to housing and ways to protect it. In this way, support can be mobilized for housing rights under the broad banner of human rights and thereby greatly assist in the often arduous process of putting the right into operation.

8.2 The Role of Lawyers

As was stated earlier, legal tools have only rarely been beneficial to the needs of the poor majority in developing countries. Much of the reason for this lies with the formulation of the law itself. However, those trained to assist with the implementation and equal enforcement

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of the law are also responsible entities. Indeed it is not a coincidence that "lawyers jokes" and the common perception of lawyers are frequently derived from their status as servants of the rich. Clarence Diaz, one of the foremost proponents of the law as a form of empowerment, has stated clearly the negative role often played by lawyers. He states that

"... lawyers and legal professionals today tend to be very much part of the problem. In some respects, the view that the legal profession 'has a tendency to be blind to the structures which support or even cause the problems with which they are dealing may be an understatement' (Galtung, 1979). Lawyers, by trade, are manipulators: of language; of process; of facts and the interpretations given to them. The professionalization of those dealing with legal services has led, inevitably, to lawyers developing manipulative skills on behalf of the highest bidder for their services."⁶

This statement should not imply that all lawyers are inherently a hindrance to the development of legal options for the rural and urban poor. It must be seen in a larger context, which is simply that in most Third World countries, "... present legal systems are structured in favour of the powerful and wealthy and are a major obstacle to improving the responsiveness of legal systems and tend to presume that wealth and access should be correlated."⁷ Hence, a new type of legal professional is required if the right to housing is ever to be put into operation in areas where it is immediately needed.

It is accepted that, in any country, rich and poor alike, a very distinguished minority of lawyers take the decision to fight the prevailing interests of society. It is also realistic to assume that no drastic increase in the number of this type of legal professional will occur in the future, unless more lawyers become aware of the "success" they can have in this area or if government initiatives were to encourage this path of action. Thus, while we cannot expect too much from lawyers in general, the role they can play in and with community based organizations and NGOs is significant. It is certain that at present and in the future, there will be a continuing need for lawyers in developing, for instance, collective community knowledge and the capacity to use the law with a social purpose or intent. Such a perspective stipulates not only a willingness on the part of the lawyer, but also the provision of traditional legal aid to impoverished peoples as well as building up their community strength, knowledge and capacity to use the law.⁸ In this sense, lawyers will need to begin perceiving their roles as going beyond the provision of access to remedial institutions. They must also adopt new roles for themselves of a more preventative than corrective nature. For example, such lawyers could see themselves and act as:

- advocates of collective demands and group interests both in courts and in administrative, legislative and other institutions;
- educators helping to develop community awareness and knowledge of relevant laws and helping to train community para-legals;
- critics of proposed or existing legislation and administrative actions which impinge on the human rights of impoverished groups;
- law reformers asserting claims for changes in legislation and state structures;
- and jurists developing new jurisprudential concepts needed to realize the right to housing.⁹

Thus, we can see the extent to which lawyers are capable of applying their legal knowledge towards assisting the poor and community based organizations to actualize human rights. Naturally, convincing lawyers to take this path rather than the traditional one will not be easy, not least because many Third World countries suffer from a shortage of lawyers. Yet, lawyers in these countries face a choice between defending the interests of a minority who can afford their services and accepting the moral commitment to give professional support to the demands for their human rights of the impoverished majority. Certainly, it is often easier to interest young lawyers in such work as well as being easier for younger legal professionals to win the confidence of the poor. Law schools can contribute to this process by encouraging law students to take courses in poverty law and human rights, and to do internships focusing upon their potentially social role.

Although several models have been developed on the elaboration of legal assistance to the

6) See Diaz, Clarence J., "Realizing the Right to Development: The Importance of Legal Resources" in *Development, Human Rights and the Rule of Law*, Report of a conference held in the Hague, 1981, Pergamon Press, 1981, pp. 187-198.

7) *Ibid.*, P. 193.

8) *Ibid.*, p. 231.

9) *Ibid.*

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poor in a structural sense, the following appears to be appropriate in terms of the right to adequate housing. While such a model will have to be constructed to suit local and national conditions, it could consist of the following aspects:

- 1) Emphasis on collective demands and group interests.
- 2) Establishment of clinics which are promotive in that they actively seek out the grievances of poverty groups and advocate their interests e.g. a national or local poverty law centre.
- 3) Methods for group advocacy to include administrative, legislative and other spheres of policy articulation and implementation.
- 4) Increasing the types of assistance to include counselling, the structuring of transactions, and the formation of associates.
- 5) The structure of the entire system to include participatory involvement of potential beneficiaries. Such participation could take the form of the management of legal aid schemes, dissemination of information about social welfare schemes and redistributive legislation and the encouragement of self-help programmes.¹⁰

10) Ibid., p. 204.

The success of implementing this model, and indeed each of the points made in this section, depends to a large degree upon how lawyers, NGOs and community based organizations respond to the legal challenges confronting them. There is a crucial legal role to be played by these entities and, as the preceding analysis has shown, these roles must be vigorously pursued at all levels if the right to housing as a human right is to become a fundamental, universal and sustainable reality.

Section Nine

Towards a Universal Definition of the Right to Housing

As was shown in sections three and five, the right to housing as a human right exists in a wide variety of legal instruments. In spite of its relatively common codification however, little has been done with a view to determining the precise contents of this norm. A generally accepted definition of this right has yet to be devised. Like other economic, social and cultural rights, an appropriate and acceptable definition of the right to housing is critical in several respects. Firstly, a widely accepted definition of this norm will help to clarify the obligations of states towards the implementation of this right. Moreover, once the contents are known, those in need of adequate housing and their respective organizations will be in a better position to demand that the component elements of this right are met by those with the legal duty to do so. Secondly, with a clear categorization of the contents of this right, the task of determining non-compliance or violations of housing rights will be less difficult. Thirdly, the core requirements of obligations relevant to implementing these rights can be used as a model for new laws, legislation and measures by governments to combat inadequate housing conditions. Finally, the process of defining this right (which does not end here) will enable those people most in need of this right to participate in the process of assessing the contents of this norm based upon their needs.

The definition of housing rights must encompass the opinions or viewpoints of a variety of bodies if an appropriate delineation of the contents is to be discerned. Ideally, there should be an ongoing interchange of ideas between slum dwellers, squatters, community based organizations, national NGOs, international NGOs, local governments, national governments, large property owners, international financial institutions, the Committee on Economic, Social and Cultural Rights, other human rights organs of the UN, other inter-governmental organizations and, of course, anyone else who wishes to be involved. Such exchanges would facilitate popular participation on this issue, as well as attempting to preclude solely top-down attitudes which commonly prevail within such initiatives. While the number of potential participants in this discussion is large, without such a diversity of views housing rights may be interpreted solely by governments and possibly in such a way as to preclude effective action. It will mean a great effort, yet the end result should such an exchange come about, is bound to be a more broadly acceptable definition and one in which all affected parties takes part. While such a process might not be currently possible in some countries or regions, a great deal can happen in the immediate future in those places where dialogue is possible.

Thus, what are the considerations which must be taken into account in creating a legal definition of the human right to housing at the international level? First of all, those inquiring into this definition will have to base it upon the corpus of existing laws, such as those discussed above. Once these are known, a good deal of information can be derived from the terminology used (e.g. "adequate" housing), the discussions and drafting of these rights (e.g. the "travaux préparatoires"), the guidelines for states' reports on housing rights (e.g. under article 11(1) of the CESCR), legal interpretations of housing rights and other related rights (e.g. jurisprudence), and other various national endeavors towards this end. Where possible this was attempted above, especially in terms of the CESCR.

A second consideration for an eventual definition of the right to housing is that it should be of both a corrective and preventative nature. Any appropriate determination of the necessary components should be designed in such a way as to preclude the causes of inadequate shelter and homelessness, and be formulated so as to avoid non-compliance. A right to housing should also have a remedial function. It should in this sense assist people who are currently inadequately housed, those without secure tenure or those without shelter to gain adequate housing through state action. Such action could entail an increase in the production, supply and provision of housing resources including land, building materials, basic services, housing and so on and with assured access to them.

In addition to these considerations, a realistic definition must be simple enough for all relevant bodies to understand, accept and act upon, while at the same time being comprehen-

sive enough to include recognition of the needs inherent with this norm. The views taken at the Committee on Economic, Social and Cultural Rights support this contention. However, as this report has shown, the question of housing rights in both legal and non-legal terms is far from simple. For instance, if we consider the direct links of this right with the dozen rights contained in section five (the permeability of rights) we observe that in purely legal terms, housing concerns are widely applicable. While these related rights should be looked at and used by advocates of housing rights, for the sake of a pragmatic definition it may be better not to include them; if each of these concerns were to be directly included in the sought after definition, the core requirements could be obscured. Additionally, such a broad definition might be declared too cumbersome for governments to accept - i.e. the more precise the definition, the more precise the obligation.

An appropriate definition must also seek to reconcile both public and private approaches to the provision and availability of shelter resources, as well as recognizing that dogmatic market based solutions to housing shortages and the total denial of any market forces are not appropriate. Clearly a balance must be sought. Owner-occupied housing and rented housing must be considered with the rights of each sector guaranteed. It must address the fact that the urban poor are responsible for building the majority of new housing in the cities of the Third World. It must also recognize an understanding that many of the governmental obligations concerning the implementation of this right include the provision of housing, services and resources, should people be unable to provide these for themselves. Recognition of the various forms of property ownership which prevail throughout the world must also be included. Moreover, this definition must be relevant to those who are adequately housed, including those who do not own the property they live in.

Thus, if we use the aforementioned criteria (with the exception of the future crucial role of the many necessary participants) we can conclude that the points outlined in section one concerning what constitutes an adequate house have proven to be not only appropriate in de facto terms but in legal terms as well. Not only do those six criteria correspond to the current realities found amongst those living without adequate housing but they also correspond to the various contents of the right to housing as we have discussed them in this text. They constitute the notion of adequacy, they are both preventative and curative by nature, they are comprehensive yet precise and can be further developed at all levels. Moreover, these six critical points can also easily be perceived as both rights and as corresponding obligations. They assume that the right to housing does not necessarily imply that a government is required to build housing for its population, but rather that the enabling approach may be the most viable and realistic way to implement this right. It must be stated though, that in some cases it will be a governmental responsibility to build housing as long as the needs of those who are to inhabit it are met and discussed beforehand, especially in the more developed countries where self-built housing is not as common. These points can be easily understood, they can be developed according to local conditions, and they fulfil the needs of those without adequate shelter. Thus, the right to an adequate house, based upon the norms discussed above, should be interpreted to contain the following points:

- 1) the physical structure;
- 2) the house site;
- 3) infrastructure facilities;
- 4) cost;
- 5) location;
- 6) security of tenure.

Of course, if we were to stop here with our delineation of housing rights, it would be insufficient. As housing, particularly in the context of rights, cannot be viewed solely as a commodity, the provision, supply and accessibility of which is determined solely by the market, we must substantiate our definition with several other points. As we have seen, the right to housing is much more than the provision of a roof over one's head. This right must be addressed in the overall context of shelter if it is to have any use. This right is certainly of great importance to homeless people, but equally so to other sectors of society. Most importantly, the notion and guarantee of equality of treatment and opportunity must pervade housing rights. Single people must have an equal right to adequate accommodation as families. Young people must be entitled to sufficient housing according to their needs and wishes. The same applies to the elderly, to ethnic minorities in a society, to gay men and lesbians, to women, to people with physical and mental disabilities, to travellers, to refugees,

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to ex-offenders and to those in temporary housing. None of these groups, nor those falling outside these categories, should be excluded. They all have equal rights to housing and should, under the law, be free from all forms of discrimination and guaranteed *de facto* equal opportunity to find secure, accessible and affordable accommodation.

We must also add that this right must be interpreted to allow people to have a right to be rehoused if they are made homeless by intentional and/or non-preventable circumstances. In richer states, it should be the government's duty to house, rehouse or create conditions making this possible by people who are living in overcrowded accommodation, in sub-standard housing and generally those most in need.

In Third World states, building codes and regulations must be appropriately reformulated in accordance with housing rights. In the "developed states", appropriate, new, higher and ecologically based standards must be created concerning repairs, space, amenities, heat, ventilation, heat and sound insulation, safety and management in the fulfilment of housing rights. Where possible this can be done with individual initiative. Where not possible though, the legal obligation exists for states to guarantee these.

Housing rights must of course, at the most basic level, provide legal protection against arbitrary eviction. Squatters and public renters all over the world must possess this guarantee as a cornerstone of their right to adequate shelter. Tenure must not only be secure in words (and most of the time in law) but also in practice. If unjust evictions occur, the right to housing must include the right to compensation for those evicted (to include rehousing or financial redress) and the right to press legal charges against the person or entity responsible. Any threats of eviction based on discrimination must also be included. Housing policies must not be callously imposed, nor the conditions of it. Tenants, both public and private, must be consulted prior to any changes taking place concerning their living situation, they must have a right to consultation on design and rent level, they have the right to information concerning any dangers affecting their dwellings, to housing supply and finally the details of their rights must be written in simple, easily accessible terminology, in their own language.

It is certain that these delineations of some of the more central contents and obligations of housing rights will vary in detail according to where they are applied. Over time, some of these elements will change as well. Housing rights are not static but rather they are dynamic and frequently changing in terms of their more specific elements. While this is the case, one thing that does not change is the fact that housing and the human right to it, is and will remain a fundamental human need to which the entire population of the world is entitled.

Section Ten

Conclusions and Recommendations for Action

10.1 Conclusions

Above all this study has revealed that the human right to adequate housing is firmly entrenched within the norms constituting international human rights law. In its most basic formulation, it is found within the Universal Declaration of Human Rights, with more unequivocal formulations of this right found in the International Covenant on Economic, Social and Cultural Rights, ILO instruments, various regional human rights standards, national constitutions and alongside other existing rights with which it has express links. With the codification of this right being so prevalent in many areas of the law, all states are thus legally bound to recognize and implement this entitlement but to different degrees depending on the precise nature of the obligation. While the legal basis of housing rights is thus clear, it is in respect of the corresponding obligations assumed with the recognition of these rights, as well as the precise determination of the exact contents of these rights, where the greatest amount of effort will be needed in the future. It is thus clear that increased attention will have to be given to this right if its various formulations are to be implemented in a comprehensive and appropriate fashion. *De facto* and *de jure* rights to housing in all countries are essential to ensure safe and fair access to housing, to prevent harassment and arbitrary eviction and to enforce decent conditions.

The increased international attention given to the question of housing and shelter resulting from the IYSH and other related initiatives is a step in the right direction, yet the notion of housing in the context of human rights remains all too often on the periphery of discussions concerning these issues. While it could not be stated that great improvements will inevitably come about through the sole pursuit of housing rights, the legally based path is certainly a worthy one to consider. Obviously, the law alone cannot in and of itself bring about the necessary changes. This report has shown that while the law is frequently utilized in an oppressive way, it can also be seen and used as a means towards empowering those who are in need of adequate living conditions. As such, there exists a particularly large role for international and national NGOs and more locally based community based organizations to play in the process leading towards empowerment and the improvements that it can bring. Because the main hurdles surrounding the right to housing concern the implementation of this right, the challenges facing community based organizations and NGOs are indeed formidable.

If there is one point which has been made clear with this study, it is that the fulfilment of housing rights and actions designed to facilitate this ideal must go far beyond the publication of reports such as this one. NGOs, community based organizations, the urban and rural poor and many other actors need, at the most basic level, to become aware of the fact that there already exists a wide variety of housing rights and other related rights which can potentially be used as tools to improve shelter conditions throughout the world. The present laws must be brought to those inadequately housed for them to discuss, develop, consider and finally use. Governments must be made increasingly aware and reminded of the fact that they possess legal obligations to implement housing rights. Inter-governmental organizations such as the UN must be convinced to more vigorously pursue this issue. Educational and promotional endeavours should be considered as one possible means of heightening awareness of the potential that the right to housing as a human right has to offer.

Because so little has been accomplished in substantive terms at the international and national levels concerning the appropriate development of housing rights, the avenues of possibility are many and diverse. Many of these will have to be carried out at the local and national levels, whereas others should be pursued at the international and inter-governmental levels. However, in spite of the various degrees of action available and the diversities currently apparent, it is not difficult to foresee the potential actions that will be necessary to carry out if the right to housing is to become universally realized. Finally, although this report has been largely pursued from a legal perspective it has shown that the concept of housing rights is an area in which too little work has been accomplished and one in which a great deal remains

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to be done, both in legal and non-legal terms. It is hoped that this study will act as a catalyst, not only for the various legal avenues which could be investigated, but especially for the sustained improvement of shelter conditions throughout the world.

10.2 Recommendations of Action

There are a number of actions which NGOs and community based organizations concerned with an improvement of housing and living conditions may pursue themselves or put pressure on the relevant national and international bodies to carry out. These are here divided into two parts. The first concerns detailed actions which could be carried out within the various systems of human rights protection which were outlined in Section three. The second part will refer to national/domestic initiatives which concerned groups may wish to act upon. These will focus on developing further the concept of a right to housing, as well as revealing ways in which NGOs and community based organizations could continue the international struggle for improved shelter conditions throughout the world in legal terms. It must be understood however, that many of the expressly legal procedures outlined below are rather complex and may involve the assistance of a "legal expert" in initiating them. To detail the full extent of each of these procedures here would be not only too lengthy but also too confusing. These judicial remedies are critical though in terms of legally persuading states to sufficiently fulfil their duties relevant to housing rights and they should become known, understood and, where necessary and possible, applied and utilized. It is envisioned that a legal hand book for non-lawyers and lawyers not familiar with international human rights law detailing the necessary criteria and information concerning these procedures will be developed in the near future. Nonetheless, many more simple activities can be carried out immediately.

10.2.1. The United Nations

The Committee on Economic, Social and Cultural Rights (See Section 3.6). Meets annually, usually in November/December for three weeks in Geneva, Switzerland.

In dealing with this committee NGOs may:

- 1) Encourage the committee to adopt positive procedural changes in their working methods. These could include, *inter alia*, the designation of a working group or one committee member to become "experts" on the right to housing; the adoption of "general comments" on the right to housing; and a more effective follow-up of states' reports, especially when these reports exhibit either an inadequate response to the obligations surrounding the right to housing or any major difficulties in implementing this right;
- 2) regularly incorporate the work of the committee into their own programmes of action. This could include: submitting reports on the compliance or non-compliance with the right to housing in their own countries and other countries, if possible; presenting oral submissions (should this be eventually allowed by the committee) on states' reports under consideration on the right to housing; widely distributing the "concluding observations" of the committee in their own countries which concern questions relating to housing; inform their constituents of the committee as a source of empowerment that "something is being done" for them at the highest international level; urge the committee to encourage states parties to allow NGOs and community based organizations to comment on their own state's reports prior to publication, as well as possibly enabling these groups to prepare their own alternative reports on the right to housing to be compared with the state's reports on this topic; and NGOs should publish their own state's reports and distribute them widely to national media centres;
- 3) request the committee to ask the UN Commission on Human Settlements to send a representative to the sessions of the committee or at the very least to regularly submit information to the committee concerning the component elements of the right to housing.

The International Labour Organisation (ILO) (See Section 3.4). The ILO is based in Geneva, Switzerland. Some of its most important bodies are: the Governing Body, the Committee of Experts on the Application of Conventions and Recommendations, Interna-

tional Labour Conference and the Committee on Freedom of Association.

NGOs and community based organizations could work with the ILO in the contexts of:

- 1) encouraging the revision of Recommendation 115 concerning worker's housing and that this revision include the transformation of this instrument into a legally binding convention;
- 2) forwarding "representations" based upon alleged non-compliance of convention 117 if necessary, thereby aiming to achieve redress with *de facto* inconsistencies;
- 3) networking with trade unions and other employee organizations which have direct access to the ILO and encourage them to assist them in addressing questions of housing within the ILO.

Committee on the Elimination of Racial Discrimination (CERD) (See Section 5.2, 6.2). Meets generally twice annually for three week sessions, once in spring and once in summer, alternatively in New York and Geneva.

- 1) if NGOs or community based organizations are aware of any cases of racial discrimination in the housing area, they could forward complaints to this body, should the necessary prerequisites be met;
- 2) community based organizations and NGOs could sponsor research into the case law created by this body concerning Article 5(e)(iii) re: housing and discrimination;
- 3) housing advocates could analyze the contents of CERD in order to compare its norms with the domestic legislation in their own country, and thereby encourage legislative reform.

Committee on the Elimination of Discrimination Against Women (CEDAW) (See Section 5.8 and 6.2). Meets once annually for two-three weeks in February or March, alternatively in Vienna and New York.

- 1) should NGOs or community based organizations possess information or knowledge of any act of non-compliance with this instrument by states parties, the search for redress could be attempted through this body;
- 2) research should be undertaken to look into the case law of this body to discern its potential usefulness for rectifying housing dilemmas;
- 3) local groups could compare domestic laws with the norms of this convention.

The Human Rights Committee (See Section 5.1-5.6 and 6.2). Meets three times annually for three weeks at a time: a spring session in New York (March/April), a summer session (July) and an autumn session (October/November) in Geneva.

- 1) NGOs or community based organizations could forward complaints to this committee under the optional protocol attempting to overturn some of the points decided in *I.M. v. Norway* of 1982;
- 2) these groups should carry out similar initiatives as those mentioned under CERD and CEDAW.

Commission on Human Rights Meets annually once for six weeks in Geneva in February and March.

- 1) NGOs and community based organizations could annually take part in the sessions of this body and prepare written and oral submissions aimed at substantiating the right to housing;
- 2) anyone could forward communications under the ECOSOC 1503 procedure if housing policies in a state constituted gross and systematic violations of human rights;
- 3) NGOs could urge the commission to undertake formal studies on the right to housing;
- 4) NGOs could urge the commission to incorporate within their work an increased emphasis on economic, social and cultural rights and urge resolutions concerning non-compliance with these, if necessary;
- 5) NGOs without consultative status with ECOSOC should attempt to obtain it. Otherwise, HIC could act as an effective international clearinghouse to provide information to the UN.

Conclusions and Recommendations for Action

The Economic and Social Council (ECOSOC) (See Section 3.1.2 and 6.3.1). Meets twice annually for three weeks at a time, once in spring and once in autumn, in both New York and Geneva.

- 1) NGOs with access to ECOSOC should urge them to continue their positive tendencies regarding the realization of the right to housing as delineated in the resolutions of 1987;
- 2) NGOs could urge ECOSOC to adopt a more active approach in terms of their potential monitoring functions of states' reports under the CESCR.

The Sub-Commission on Prevention of Discrimination and Protection of Minorities (See Section 6.3.3). Meets once annually for four weeks in Geneva in August.

- 1) NGOs should regularly attend the sessions of the Sub-Commission and urge them to devote increased attention to the right to housing. Encouragement could also be given to this body to carry out a formal study on the right to housing, similar to that carried out on the right to food;
- 2) NGOs could also urge the Sub-Commission to extend coverage to the right to housing by regularly adopting resolutions on this right, by creating a working group on the right to housing, and to consider the option of declaring under the 1503 procedure violations of economic, social and cultural rights.

UN Commission on Human Settlements (UNCHS) Meets bi-annually for one week in various parts of the world, usually in spring.

- 1) NGOs and community based organizations should encourage this body to focus on the question of housing and evictions from a legal and human rights perspective etc.

10.2.2 The Council of Europe (See Section 5 and 3.5.3)

- 1) NGOs and community based organizations should commission research into examining the relevance of case law under the ECHR and the contents of states' reports as required under the ESC with a view to determining the accessibility of these bodies for housing claims;
- 2) cases could be forwarded based upon rights related to housing rights with a view to securing a more comprehensive approach to these.

10.2.3 The OAS (Inter-American System) (See Section 3.5.1)

- 1) NGOs and community based organizations should lobby their governments to include the right to housing within the additional protocol to the ACHR;
- 2) NGOs and community based organizations could prepare cases to be forwarded to the Inter-American Commission on Human Rights based upon the various provisions on housing within this system in order to discern the legal status of this right within the OAS.

10.2.4 The OAU (African System) (See Section 3.5.2)

- 1) NGOs and community based organizations could request the African Commission on Human and Peoples Rights to determine if the related provisions of development, a satisfactory environment and so on could be used to claim a right to housing;
- 2) communications could be brought before the Commission based upon component elements of the right to housing with a view to discerning the degree to which this norm can be derived from the Charter etc.

10.2.5 The National Level

At the national level NGOs and community based organizations could considerably enhance their effectiveness by carrying out a variety of endeavours including:

- 1) drawing up and publicizing their own nation's international and domestic legal

- obligations to fulfil the right to housing;
- 2) urging their own states to ratify international instruments containing the right to housing or elements thereof, if they have not already done so. These instruments would include the CESCR, ILO Convention 117, the ACHR and protocol, the AfCHPR, the ECHR, the ESC, the ICCPR, CERD and so forth;
- 3) urging the adoption of domestic legislation which conforms to a state's international obligations and which appropriately addresses the needs of those lacking adequate shelter;
- 4) urging the passage of legislation which guarantees effective remedies for alleged non-compliance with the right to housing;
- 5) informing their constituents of their rights to adequate housing under international law;
- 6) basing demands for improved housing conditions not only on moral arguments, but legal ones based on rights as well;
- 7) monitoring their own state's compliance with their international obligations relating to housing;
- 8) requesting that NGOs be allowed to participate in the drawing-up of any states reports concerning elements of the right to housing;
- 9) drawing-up alternative reports to that of the state concerning the degree to which the right to housing has been either fulfilled or denied;
- 10) coordinating the creation of a national computerized data-base which could include: all relevant legal cases which concerned the right to housing; a compilation of domestic legislation relating to housing; all groups involved at this level with housing rights; and other pertinent information in this regard.

10.3 General Initiatives

Since early 1990 Habitat International Coalition (HIC) has been engaged in a Global Campaign for Housing Rights. Coordinated largely by HIC's Housing Rights Sub-Committee, the Campaign continues to evolve and is beginning to see some, albeit small, results. While the breath of its actions are admirable, particularly when viewed in terms of its relatively small size, the Campaign and the actions and initiatives comprising it could go a great deal further. One possible means of strengthening the Campaign and thus also global prospects for the right to adequate housing would be an enhanced focus on a number of areas currently under-emphasized by the movement. Among some of the new possibilities are:

- 1) provide information to community based organizations and NGOs pursuing legal claims to the right to housing, based upon past experiences in this regard;
- 2) act as an international clearinghouse of information and data concerning the right to housing in all of its aspects;
- 3) regularly monitor actions at the international level concerning housing rights and to forward written and oral submissions to relevant international institutions;
- 4) provide publications for wide distribution to community based organizations and NGOs detailing the legal obligations of each state of the world vis-a-vis international duties to ensure the right to housing;
- 5) provide legal assistance of all kinds to whomever requires it;
- 6) further develop and continually re-address the question of housing rights based upon the changing realities of the international community;
- 7) sponsor an international conference on housing rights to which members of UN and other inter-governmental bodies concerned with housing rights could be invited. (For instance, members of the Committee on Economic, Social and Cultural Rights, the Commission on Human Rights, the Sub-Commission, ECOSOC, the ILO, the Inter-American Commission on Human Rights and so on;)
- 8) sponsor workshops at the UN and within other organisations during appropriate sessions to garner support and understanding for the right to housing with all its complexities;
- 9) prepare detailed reports on particular states' reports and the coverage given to these reports by the monitoring bodies concerned;
- 10) utilize existing human rights procedures at the international and regional levels aiming to substantiate the right to housing throughout the world;
- 11) maintain a regular presence within inter-governmental organizations with a view to urging a greatly increased coverage of housing rights; and
- 12) provide funding for local community based organizations if possible, which are carrying out work relating to the right to housing.

Conclusions and Recommendations for Action

These few examples are only illustrative of the many initiatives that HIC could carry out in support of the realization of the right to housing. This text has shown that such actions would fill a very large gap in the area of monitoring and enforcement of housing rights, as well as to the issue of clarifying this right. It could be of instrumental importance in informing the people of the world of their rights in this regard and to transforming the words "a right to adequate housing" into a comprehensive and concrete reality for all of the world's citizens.

Appendix I

Constitutional Sources of the Right to Housing

An increasing number of constitutions throughout the world have enshrined the right to housing in various forms. Some are very specific, with others of a more general nature. While some constitutions do not mention the right to housing as such, they may contain relevant provisions pertinent to this right. Thus, what follows is a listing of many of the relevant constitutional provisions in place at present dealing with the topic at hand. The first section will delineate those provisions directly relating to housing, whereas the second will concern some indirectly related clauses.

People's Republic of Bangladesh (1986)

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..."

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 13: "The application of land to useful purposes and to the gradual elimination of large holdings (latifundios) are declared to be of social interest."

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 programs 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 expropriate, 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 services and attention necessary for their well-being."

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."

Greece (1975)

Article 21(4): "The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special state care."

Guatemala

Article 105: "*Workers' Housing.* 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 programs 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: "The obligations of the state are:

Article 119(d) To see to the raising of the standard of living of all the country's inhabitants, securing the well-being of the family...

Article 119(g) To promote on a priority basis the construction of proper housing through systems of financing so that a large number of Guatemalan families may have title to it. When resulting or co-operatively held housing is involved, the systems of land tenure may be different."

Co-operative Republic of Guyana (1980)

Article 26: "Every citizen has the right to proper housing accommodation."

Haiti (1987)

Article 22: "The state recognizes the right of every citizen to decent housing, education, food and social security."

Honduras (1982)

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."

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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."

From Housing Needs To Housing Rights

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 organization and functioning."

Iran (1980)

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 first consideration given to those who are in need, in particular villagers and labourers."

Japan (1947)

Article 25: "All people shall have the right to maintain the minimum standards of wholesome and cultural living. In all spheres of life, the state shall use its endeavours for the promotion and extension of social welfare and security, and of public health."

People's Republic of Kampuchea

Article 15: "Citizens have the right to use and inherit land allotted by the State to each family according to the provisions of the law, on which to build a house and grow crops or orchards."

North Korea

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."

The 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 fulfilment of this right."

The Islamic Republic of Pakistan (1973)

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 (1967)

Article 83: "Every family has the right to a home standing on its own land, for which purposes institutions shall be perfected and the most favourable laws shall be enacted in order to make far more widespread ownership of urban and rural real property and promote the construction of low-cost, comfortable and sanitary housing units especially for wage-earners and rural workers."

Peru (1979)

Article 2(9): "Every person has a right to freely choose the place of residence, to travel across the national territory, and to exit and re-enter it except for restrictions imposed for measures of public health and not to be expatriated or removed from the place of one's residence except by court order..."

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 state 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, section 9: "The state shall by law, and for the common good, undertake, in cooperation with the private sector, a continuing program 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, section 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

Article 79(5): "In its concern for the welfare of the family, the Polish People's Republic aims at an amelioration of the housing situation, develops and supports, with the participation of the citizens, various forms of residential construction, especially of cooperative construction, and cares for the rational 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 on town plans which safeguard the existence of an adequate network of transport and social facilities; (b) Encourage and support initiatives by local authorities and communities aimed at solving their housing problems and promoting individual building and the establishment of housing cooperatives; and (c) Promote private building subject to the public interest."

From Housing Needs To Housing Rights

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 64(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."

Republic of Seychelles (1976)

Article 3(v): "The aims and objects of the Front shall be:

"To create a socialist state wherein all citizens, regardless of colour, class, race, sex or creed shall have equal opportunities and be afforded with the basic needs of life in a modern society, such and security of income, medical care, good and hygienic housing, free and compulsory education..." (from the Constitution of the Seychelles People's Progressive Front.)

Spain (1978)

Article 47: "All Spaniards have the right to enjoy decent and adequate housing. The public 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."

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."

USSR (1977)

Article 44: "Citizens of the USSR have the right to housing. The right is ensured by the development and upkeep of state and socially owned housing; by assistance for cooperative and individual house building; by fair distributions, under public control, of the housing that becomes available through fulfilment of the programme of building well-appointed dwellings, and by low rents and low charges for utility services. Citizens of the USSR shall take good care of the housing allocated to them."

Vietnam (1980)

Article 62: "Citizens have the right to housing. The state has the responsibility to directly improve the rate of housing construction by collectives and individuals according to common plans, so as to gradually implement this right. The allotment of state housing space must be fair and equitable."

Yugoslavia

Article 164: "Citizens shall be guaranteed the right to acquire a tenancy title to a dwelling in social ownership, which ensures them permanent occupancy, under conditions specified by statute, of a socially-owned dwelling for the satisfaction of their personal and family housing needs. The right of citizens to a dwelling subject to the right of ownership shall be regulated by statute."

Selected Indirect Provisions**Algeria (1976)**

Article 67: "All citizens have the right to health protection. This right is implemented by a general and free public health service, the extension of preventative medicine, the steady improvement of living and working conditions..."

People's Republic of the Congo (1979)

Article 33: "Private property as well as the right to inheritance of goods and chattels, other than land, are guaranteed. Nobody can make use of this right to private property to the detriment of the community..."

Cyprus

Article 19: "The government may acquire land by compulsory acquisition for the construction of low-income houses."

Republic of Djibouti (1977)

Article 2 of Constitutional Law No. 1: "The Republic of Djibouti adheres to the Universal Declaration of the Rights of Man. It affirms the necessity of establishing a political order where the rights and liberties set forth in this declaration may have full force." (This art. 25)

Ethiopia

Article 10(2): "In order to create favourable conditions for development, the state shall ensure that human settlement patterns correspond to the distribution of national resources."

Federal Republic of Germany (1949 and 1979)

Article 13: "The inviolability of the home cannot be violated except...to alleviate the housing shortage..."

Ghana (1982)

Section 50(1): "No person shall own more than one house built by the State Housing Corporation Terra Development Corporation or other public body."

Panama (1978)

Article 44: "Private property implies obligations on the part of its owner by reason of the social function which it may fulfil. For reasons of public utility or of social interest as defined by law, there may be expropriation pursuant to special judgement and with compensation.

Article 45: "When the application of a law enacted for reason of public utility or social interest results in a conflict between private rights and the need recognized by the law itself, the private interest must yield to the public or social interest."

Qatar (1970)

Article 7(e): "The state shall do everything in its power to protect its citizens against the causes of disease, ignorance and poverty."

From Housing Needs To Housing Rights

Venezuela (1971)

Article 77: "The state shall strive to improve the living conditions of the rural population."

The African National Congress' Freedom Charter (1955)

"...All people shall have the right to live where they choose, to be decently housed, and to bring up their families in comfort and security. Unused housing space is to be made available to the people. Rent and prices shall be lowered...."

Appendix II

Relevant Human Rights Instruments and Ratifications

The United Nations

1) The Charter of the United Nations (1945).

2) The Universal Declaration of Human Rights (UDHR) adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948.

3) The International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted and opened for signature, ratification and accession by General Assembly Resolution 2000 A (XXI) of 16 December 1966. Entry into force: 3 January 1976.

States parties are: Afghanistan, Algeria, Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Bulgaria, Byelorussian SSR, Cameroon, Canada, Central African Republic, Chile, Colombia, Congo, Costa Rica, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Finland, France, Gabon, Gambia, Federal Republic of Germany, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, India, Iran, Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Korea (Republic of), Lebanon, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Mali, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Saint Vincent and the Grenadines, San Marino, Senegal, Solomon Islands, Somalia, Spain, Sri Lanka, Sudan, Suriname, Sweden, Syrian Arab Republic, Tanzania, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian SSR, USSR, United Kingdom, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia.

4) The International Covenant on Civil and Political Rights (ICCPR) adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966. Entry into force: 23 March 1976

States parties are: Afghanistan, Algeria, Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Bulgaria, Burundi, Byelorussian SSR, Cameroon, Canada, Central African Republic, Chile, Colombia, Congo, Costa Rica, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Finland, France, Gabon, Gambia, Federal Republic of Germany, Guinea, Guyana, Hungary, Iceland, India, Iran, Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Korea (Republic of), Lebanon, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Mali, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Saint Vincent and the Grenadines, San Marino, Senegal, Somalia, Spain, Sri Lanka, Sudan, Suriname, Sweden, Syrian Arab Republic, Tanzania, Togo, Trinidad and Tobago, Tunisia, Ukrainian SSR, USSR, United Kingdom, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia.

5) Optional Protocol to the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966. Entry into force: 23 March 1976.

States parties are: Algeria, Argentina, Austria, Barbados, Bolivia, Cameroon, Canada, Central African Republic, Colombia, Congo, Costa Rica, Denmark, Dominican Republic, Ecuador, Equatorial Guinea, Finland, France, Gambia, Hungary, Iceland, Ireland, Italy, Jamaica, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Mauritius, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Peru, Portugal, Saint Vincent and the Grenadines, San Marino, Senegal, Somalia, Spain, Suriname, Sweden, Togo, Trinidad and Tobago, Uruguay, Venezuela, Zaire, Zambia.

6) International Convention on the Elimination of All Forms of Racial Discrimination (CERD), adopted and opened for signature and ratification by General Assembly Resolution

2106 A (XX) of 21 December 1965. Entry into force: 4 January 1969.

States parties are: Afghanistan, Algeria, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bangladesh, Barbados, Belgium, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Byelorussian SSR, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Democratic Kampuchea, Democratic Yemen, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Federal Republic of Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Holy See, Hungary, Iceland, India, Iran, Iraq, Israel, Italy, Ivory Coast, Jamaica, Jordan, Korea (Republic of), Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Maldives, Mali, Malta, Mauritius, Mauritania, Mexico, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Peru, Poland, Portugal, Qatar, Romania, Rwanda, Saint Vincent and the Grenadines, Senegal, Seychelles, Sierra Leone, Solomon Islands, Somalia, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Syrian Arab Republic, Tanzania, Togo, Tonga, Trinidad and Tobago, Tunisia, Uganda, Ukrainian SSR, USSR, United Arab Emirates, United Kingdom, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia.

7) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted and opened for signature, ratification and accession by General Assembly Resolution 34/180 of 18 December 1979. Entry into force: 3 September 1981.

States Parties are: Angola, Antigua, Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Bhutan, Brazil, Bulgaria, Burkina Faso, Byelorussian SSR, Canada, Cape Verde, Chile, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Finland, France, Gabon, Federal Republic of Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Iraq, Ireland, Italy, Jamaica, Japan, Kenya, Korea (Republic of), Lao People's Democratic Republic, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritius, Mexico, Mongolia, Morocco, New Zealand, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Spain, Sri Lanka, Sweden, Tanzania, Thailand, Togo, Tunisia, Turkey, Uganda, Ukrainian SSR, USSR, United Kingdom, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia.

8) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly Resolution 39/46 of 10 December 1984. Entry into force: 26 June 1987.

9) Convention relating to the Status of Refugees, adopted on 28 July 1951 by the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly Resolution 429 (V) of 14 December 1950. Entry into force: 22 April 1954.

10) (Draft) International Convention on the Rights of the Child.

Relevant Declarations, etc.

1) Declaration of the Rights of the Child, proclaimed by the General Assembly of the United Nations on 20 November 1959 (resolution 1386 XIV).

2) Vancouver Declaration on Human Settlements, adopted at the United Nations Conference on Human Settlements, June 1976.

3) Declaration on the Right to Development, adopted by the General Assembly on 4 December 1986.

4) Standard Minimum Rules for Treatment of Prisoners, adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and

approved by the ECOSOC by its Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

5) Declaration on Social Progress and Development, proclaimed by the General Assembly of the United Nations on 11 December 1969 (Resolution 2542 (XXIV))

ILO Instruments and Resolutions

1) Convention 107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, adopted 26 June 1957.

2) Convention 117 Concerning Basic Aims and Standards of Social Policy, adopted 28 June, 1961.

States parties are: Bahamas, Bolivia, Brazil, Central African Republic, Costa Rica, Ecuador, Ghana, Guinea, Israel, Italy, Jamaica, Jordan, Kuwait, Madagascar, Nicaragua, Niger, Panama, Portugal, Romania, Senegal, Spain, Sudan, Syria, Tunisia, Venezuela, Viet Nam, Zaire and Zambia

3) Recommendation 115 Concerning Workers' Housing, adopted 28 June 1961.

4) Resolution Concerning the International Year of Shelter for the Homeless and the role of the ILO, adopted by the International Labour Conference at its 73rd Session, 23 June 1987.

The Council of Europe

1) The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) adopted 4 November 1950, and its additional protocols. Entry into force 1953.

States parties are: Austria, Belgium, Cyprus, Denmark, Finland, France, Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey and United Kingdom.

2) The European Social Charter (ESC), adopted 18 October 1961. Entry into force: 26 February 1965.

States parties are: Austria, Cyprus, Denmark, France, Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Malta, Netherlands, Norway, Spain, Sweden, Turkey and United Kingdom.

The Organization of American States (OAS)

1) The American Convention on Human Rights (ACHR) signed on 12 November 1969. Entry into force: 18 July 1978.

States parties are: Argentina, Barbados, Bolivia, Chile, Columbia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panamá, Paraguay, Peru, Suriname, Uruguay and Venezuela.

2) The American Declaration of the Rights and Duties of Man, proclaimed in 1948.

3) Additional Protocol to the American Convention on Human Rights concerned with the protection of economic, social and cultural rights, adopted 1988 in San Salvador (not yet in force).

The Organization of African Unity

1) Bangul Charter on Human and Peoples' Rights (AfCHPR) adopted in 1981. Entry into force: October, 1986.

From Housing Needs To Housing Rights

States parties are: Algeria, Benin, Botswana, Burkina Faso, Cape Verde, Central African Republic, Chad, Comoros, Congo, Egypt, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Libyan Arab Jamahiriya, Mali, Mauritania, Niger, Nigeria, Rwanda, Saharawi Arab Democratic Republic, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Tunisia, Uganda, Zaire, Zambia, Zimbabwe.

Appendix III

Commission on Human Rights

Forty-seventh Session

Agenda Item 12

Question of the violation of human rights and fundamental freedoms in any part of the world with particular reference to colonial and other dependent countries and territories

Written statement submitted by Habitat International Coalition, a non-governmental organization on the Roster

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

8 February 1991

1) Habitat International Coalition would like to draw the attention of the Commission to the global practice of forced evictions - a practice which clearly violates a number of internationally recognized human rights, in particular the right to adequate housing. It should be recalled that the Committee on Economic, Social and Cultural Rights declared in very clear terms that "...the right to housing can be subject to violation... especially in the context of evictions" and "...pursuant to the right to housing, people should be free from threats of eviction or deportation, demolition of their homes or any other form of persecution or harassment."¹

2) Evictions - defined as the removal of a person, family or groups from their home(s) against their will, almost always involving coercion or force and often carried out arbitrarily - affect literally millions of persons annually. Evictions can be mass in scope, sometimes medium-scale, and may also affect single individuals, families or households.

3) The following illustrative recent examples of the various manifestations which evictions can take reveal both the severity and magnitude of this issue; an issue of human rights yet to be satisfactorily addressed by the Commission - however, one which clearly requires immediate and serious international attention.

Evictions to "beautify cities"

4) In preparation for the celebrations surrounding the 500th anniversary of Columbus' landing in the region, over 15,000 families (at least 100,000 persons) have been forcibly removed from their homes in the cities of Santo Domingo and Santiago, in the Dominican Republic.² The communities most severely affected are: la zona del Faro a Colon (3,800 families); Villa Juana y Villa Consuelo (3,500 families); el Hoyo de Chulin, la 70, la Chivera y la Zurza (3,500 families); Guachupita, la Ciénaga y la Marina (1,600 families); San Carlos y Villa Francisca (1,500 families); los Cartones y la Prolongación Jose Contreras (1,200 families) and Sabana Perdida (1,000 families). The vast majority of evictees received no warning or compensation.

5) In December 1990, the United Nations Committee on Economic, Social and Cultural Rights declared the Dominican Republic to be in violation of article 11 of the Covenant on Economic, Social and Cultural Rights because of this eviction programme (see the Committee's report on its fifth session).

6) On 2 May 1990, 48 families were forcibly evicted in Paris, France by a massive police force far outnumbering the inhabitants of the building. The families have camped out in the nearby Place de la Reunion, demanding that their right to safe affordable housing be fulfilled.³

1) Committee on Economic, Social and Cultural Rights, Report of the fourth session (15 January-2 February 1990) (E/C.12/1990/3).

2) See: Somocurcio and Florian Borbon, "El Proceso de Reordenamiento Urbano y los Desalojos en Santo Domingo", 1989 and CO-PADEBA, "Remodelación Urbana y Desalojos en Santo Domingo", 1990.

3) See: HIC, "A Place to Live: News from the Global Campaign for the Right to Housing", June 1990.

Evictions for "urban redevelopment"

7) Between 17 and 21 April 1990, more than 1,000 families were evicted from the P. D'Mello Road in Bombay, India. The Bombay Municipal Authority with full police force demolished the hutments of these families without legal notice or any form of compensation, even though the families had lived on the affected site for several years. The pavements where the 5,000 people were living were immediately dug up following the destruction of the huts to prevent the resettlement of the families there. In another city, Calcutta, more than 50,000 people were evicted between 1983 and 1988.⁴

4) Ibid.

8) On 18 May 1990, more than 2,000 people were violently evicted from the squatter settlement Muoroto in Nairobi, Kenya. During the ensuing violence, seven people were killed and dozens injured. Women and children were beaten by policemen while bulldozers razed the settlement to the ground.⁵

5) See: *Weekly Review* (Kenya), 1 June 1990.

Evictions due to "overcrowding"

9) In July 1990, the Government of Morocco announced that 100,000 citizens from the ancient city of Fez would have to leave, under the pretext that the city is "overcrowded and falling into decay".⁶ In Casablanca, a fire of suspicious origin destroyed the *bidonville* Ben Msik on 16 July 1990. One person was killed and 14 wounded, with hundreds left homeless.⁷

6) *The Guardian*, 18 July 1990.

7) Reuters, 16 July 1990.

Evictions for purposes of political control

10) As many as 500,000 persons have been evicted from their homes since 1988, mostly from Rangoon, Myanmar. Soldiers force evictees to pack their belongings and then transport them to seriously inadequate and poorly equipped "resettlement sites" established by the Committee for the Restoration of Law and Order. Although the Government claims the evictions are intended to benefit the people, most analysts believe military and political control are the actual rationale behind these acts.⁸

8) See: Asia Watch Human Rights in Burma (Myanmar), May 1990, pp. 19-24; Diemann, Peter "400,000 Birmanen zwangsumgesiedelt: Massnahme betrifft vor allem Bewohner in den Hochburgen der Demokratiebewegung" in *Die Welt*, 17 July 1990.

Evictions justified due to "flooding and heavy rains"

11) Following heavy rains in the Maroko district of Lagos, Nigeria, the Government issued an eviction order on 6 July 1990, resulting one week later on 13 July in the forcible eviction of over 300,000 persons. The *bidonville* Maroko had existed since 1958. Since this massive eviction, only severely inadequate arrangements have been made for relocation or compensation. Most victims of the eviction remain essentially homeless.⁹

9) See: Ben Arrous, Michel "Pluie d'expulsions sur Lagos", ENDA, July 1990.

Evictions due to armed conflict and by foreign military forces

12) Thousands of Panama's poorest citizens were displaced from their homes during the invasion of Panama by the United States in December 1989, as a result of both bombing and subsequent bulldozing. Particularly hard hit were the communities of El Chorrillo and San Miguelito. Half of El Chorrillo - which had a pre-invasion population of 25,000 - was totally destroyed. More than half of the people forced out of this community are currently living in squalid conditions in two airplane hangers on a former United States air base in three foot by three foot cubicles.¹⁰

10) See: BRECHA: Monthly publication of the Commission for the Defence of Human Rights in Central America (CODEHUCA), January-February 1990, No.6 and "Invasion Impact Lingers in Panama Slum" in *International Herald Tribune*, 4-5 August 1990.

13) During 1990 there have been at least three armed actions on the part of the Panamanian Public Forces and the United States army to dislodge families from sites where they have settled and built homes. In January 1990, 200 families were evicted from their homes in Tucumen. In San Miguelito, 500 families were forcibly evicted on 13 March 1990 by 700 Public Forces officers accompanied by 200 United States soldiers. More than 400 families were driven from their homes in Panama Viejo by Public Forces officers in early 1990.¹¹

11) CODEHUCA and CONADEHUPA "Panama Delegations Report", No.2, 16 April 1990.

Evictions and international events

12) See: Press release, 12 September 1990, Assessment Mission to the Republic of Korea by the Asian Coalition for Housing Rights and Habitat. International Coalition; *Battle for Housing Rights in Korea, 1989 and Disposable People: Forced Evictions in South Korea*, Catholic Institute for International Relations, 1988.

13) See: Tibet Information Network, "TIN Housing Supplement, November 1990: Reconstruction in the Old City of Lhasa", 10 November 1990.

14) See: "Human Rights in Thailand Report", Vol. 13, No. 1-2, January-June 1989 and Smucker, P. "Let My People Stay: Bangkok Squatters Fight for Housing Rights" in *Development and Cooperation*, April 1989.

14) From 1985 until the 1988 summer Olympic Games, 720,000 persons were forcibly evicted from their homes in Seoul, Republic of Korea. Thirteen people died as a result of these actions, and scores of others suffered injury. Over 100 of the 250 designated "redevelopment sites" in Seoul have been evicted thus far. The remaining sites are home to 2 million people currently threatened with forced removal, 90 per cent of those evicted do not receive compensation.¹² South Korea ratified the Covenant on Economic, Social and Cultural Rights in July 1990, thus taking on obligations to fulfil, *inter alia*, the right to adequate housing.

Evictions through demolition

15) During the first months of 1990 up to 10 per cent of the remaining traditional Tibetan housing in the capital city Lhasa was demolished by the occupying Chinese authorities. At least 1,500 Tibetans were forced into temporary accommodation as a result of these evictions. The Tibetan quarter of Lhasa has been systematically reduced by the Chinese, currently constituting a mere 2 per cent of the city, whereas prior to the Chinese invasion in 1949 it constituted the entire city.¹³

Evictions and land speculation

16) A study published in 1985 found that 269 slum areas, housing 272,000 people in Bangkok, Thailand were under direct threat of eviction. During the first three months of 1990 five major evictions took place, resulting in the removal of thousands of citizens from their homes. A 1989 report states that "Thailand [is] among the countries with the most violent methods to clear away slums. For years, slum people across Bangkok have faced demolition of their dwellings by the authorities, threats from gangsters, and even arson, apart from normal legal procedures of eviction."¹⁴

17) These illustrative examples of recent evictions show conclusively that the forced removal of persons from their homes is a very real and ongoing global problem. Without serious and long-term action by the international human rights community, particularly the Commission, it is doubtful whether the debilitating practice of eviction will decrease. Evictions must be seen for what they are - a blatant and non-justifiable violation of the internationally recognized rights to adequate housing, to freedom of movement, to privacy and to the right to choose one's residence.

18) Habitat International Coalition encourages the Commission to act immediately with a view to encouraging States to cease the practice of forced eviction.

Appendix IV

Committee on Economic, Social and Cultural Rights

Fourth Session

15 January-2 February 1990

Implementation of the International Covenant on Economic, Social and Cultural Rights

Written statement submitted by Habitat International Coalition, a non-governmental organization on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolutions 1296 (XLIV) and 1988/4.

10 December 1989

1) Habitat International Coalition (HIC) is an alliance of more than 250 non-governmental and community based organizations from 60 countries, each concerned with various aspects of housing. Founded in 1976, HIC's major objective is the recognition and implementation of the right of everyone to secure a place in which to live in conditions of peace and dignity.

A) DEFINING THE RIGHT TO ADEQUATE HOUSING

2) Although the right to housing can be found in a great variety of international human rights instruments, a clear, concise and acceptable definition of this fundamental right will have to be agreed upon. HIC believes that without a legal definition of this right, the likelihood of its every achieving its potential utility is greatly diminished. The Committee is one of the most important international human rights bodies concerned with, *inter alia*, the right to adequate housing and it has significant legal and creative responsibilities which can be exercised towards the ultimate realization of this right for all who possess legal entitlements to it.

3) HIC applauds the increasing consideration and attention the Committee on Economic, Social and Cultural Rights continues to place on the right to housing. Nevertheless, the Committee could play an even more useful function if it were to give greater legal substance to this right. We realize, of course, that the right to housing is a complex right and one which will require substantial scrutiny before an acceptable "definition" is found. In order to assist the Committee with its work surrounding the human right to adequate housing, HIC would respectfully like to offer several points for consideration.

1) What the right to housing does not mean

4) Through HIC's International Campaign for Housing Rights we have learned that there are some popular misconceptions of the right to housing. In order to clarify some of these, the right to housing does not mean that:

- a) Housing is to be provided to all persons free of charge;
- b) Housing is to be seen primarily as a commodity;
- c) Housing problems will be inevitably solved by market, planned or mixed economies. None of these systems has led to the full realization of the right to housing;
- d) All elements of housing rights are subject to immediate implementation;
- e) The qualitative enjoyment of housing rights are solely dependent upon an individual or family's income;

- f) The right to housing is exclusively a right of families exclusive of individual needs;
- g) Acceptable standards of housing will be the same throughout the world.

2) What the right to housing does mean

5) The complexity of housing rights makes it impossible to cover all aspects of this right in this short submission. Still some points can be made as to what the right to housing does mean in legal terms:

- a) Housing is a fundamental basic human need relevant to all human beings. The "core contents" of this right must recognize that every person requires housing which is i) secure; ii) safe and decent for health, including the immediate environment; iii) affordable; iv) accessible; v) culturally adequate; vi) free from discrimination and of such a form that it does not detract from one's dignity as a human being; vii) properly located with easy access to basic services and infrastructure; viii) possessive of a physical quality which promotes well-being.
- b) The obligation to respect the right to housing includes protection against eviction, harassment or interferences of rights to privacy or the rights to participate in any decisions which relate to one's housing or community situation.
- c) The obligation to protect the right to housing includes the right to be protected against actions and inactions of others which impinge on the enjoyment of this right such as arbitrary rent increases by landlords (whether public, private or otherwise), any form of discrimination by any entity, eviction or harassment, tolerance of inadequate or minimum housing standards (particularly by property owners who may have a statutory duty in this respect), any action which prohibits or discourages the free association of non-governmental organizations and community based organizations, etc.
- d) The obligation to fulfil the right to housing includes the duty of taking whatever necessary measures for the fulfilment of this right such as monitoring and regulating land markets, implementing "enabling policies", the granting of tenure security to "illegal" settlements, regulating the housing market in general and the rental sector and rent levels in particular, guaranteeing through financial and other means the provision of housing resources to homeless persons, eradicating all forms of discrimination in the housing sector, etc.
- e) Several "benchmarks" which may be used by the Committee in establishing compliance with the right to housing could include:
 - i) The adoption of justiciable legislation leading towards the full enjoyment of the right to housing for all sectors of the population and the repeal of legislation which clearly inhibits housing rights from being realized;
 - ii) The percentage increase or decrease over the last five years of persons: inadequately housed in any form whatsoever, made homeless for any reason, evicted from their homes for any justification, subjected to any form of discrimination in the housing sector;
 - iii) The conferral of tenure security to all segments of the population realizing the central importance of tenure to the realization of housing rights;
 - iv) The percentage increase or decrease of public expenditure as a portion of the Gross National Product and State budget on the fulfilment of the right to housing, disaggregated according to income groups of the population;
 - v) The provision of basic infrastructure and social and other services inherent in the right to housing, etc.

These few examples are merely illustrative of what could be done.

B) EVICTIONS

6) Evictions (also referred to as forced removals, resettlements, displacements, clearances, etc.) constitute the most grievous violation of the right to adequate housing. The human rights implications of evictions are abundantly clear, and in the instances of South Africa and Israel, this has been recognized and condemned in United Nations resolutions. Evictions are far from taking place in these two countries alone. In one form or another, this is a phenomenon which affects many countries, even though the United Nations Vancouver Declaration on Human Settlements states that undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made. HIC accepts that in some situations and with certain circumstances met (such as rehousing at a mutually agreed upon location and at which living conditions do not worsen), evictions may be justifiable. Yet in many instances, evictions are carried out with insufficient warning, inadequate legal protection and often accompanied by violence.

7) For the past two years, Habitat International Coalition has been collecting evidence and information about evictions from all corners of the earth and from all regions. Our data gathering is thus far certainly not exhaustive. Nonetheless, we have documented mass and forced evictions in more than 12 different countries. HIC has carried out on-site fact-finding missions in three of these States. Combined data from the 12 States alone (nine of which are States parties to the Covenant on Economic, Social and Cultural Rights), reveals that the 1980s has been witness to over 3 million persons being evicted from their homes against their will.

8) In the reports from States parties which the Committee monitors, HIC has noticed no mention of evictions. HIC urges the Committee to permanently include inquiries into the phenomenon of evictions when questioning States parties on issues relevant to article 11 of the Covenant.

C) GENERAL DISCUSSION

9) HIC is encouraged by the new practice of the Committee of holding "general discussions" on certain rights or articles found in the Covenant. The initial general discussion on article 11 held during the third session of the Committee was a fruitful and precedent-setting initiative. Yet, due to lengthy presentations and discussion of the right to food as found in this article, virtually no time was accorded for the other constituted rights of article 11, including the right to housing. We applaud the Committee's decision of allowing an expert to speak briefly on some of the issues surrounding the right to housing last year. However, this short statement is, in our view, clearly insufficient. During the first general discussion, there was no time allotted to crucial discussions amongst Committee members about the right to housing.

10) HIC strongly urges the Committee to complete the unfinished discussion of article 11 at this year's fourth session, by allocating sufficient time and resources to consideration equal to that provided to the right to food, yet this year concerning the right to adequate housing.

D) GENERAL COMMENTS

11) HIC is pleased with the practice of "general comments" by the Committee. The first such comment on "Reporting by States parties" provides valuable insight and clarity about some of the legal obligations of States parties to the Covenant.

12) The Human Rights Committee inevitably plays a variety of roles. One of the most important are the pronouncements this body makes about the legal nature of the Covenant. As the Committee has revealed through its practice of general comments, these can add significant clarity and judicially based insight into the nature of the rights which this and other bodies are obliged to monitor. General comments can and should assist in the legal interpretation of both the entitlements and the State obligations inherent in certain rights, which is more precise than the often vaguely worded passages of the Covenant or other instruments.

13) The Committee's work or pronouncements on the Covenant have ramifications for the entire United Nations system and international law in general. Conversely, the Committee must take into account relevant developments in these other human rights organs. In this respect we urge the Committee to pay special attention to the statement made in the Preliminary Report of the Special Rapporteur on Economic, Social and Cultural Rights, Mr. Danilo Turk, where it is stated in paragraph 73 that "... the rights relating to housing remain without clear indication as to their substance, and there is a clear need to develop clearer standards in this area - taking into account the complex nature of the problem and the very different situations in which it occurs." (E/CN.4/Sub.2/1989/19) (emphasis added).

14) HIC thus requests in accordance with paragraph 330 of the Committee's Report of its third session, that the Committee give priority to the adoption of a general comment on article 11 of the Covenant.

E) GUIDELINES FOR STATES REPORTS

15) While HIC is well aware of and accepts many of the reasons and arguments supporting a revision of the existing guidelines for States reports, we also feel that over-generalization of the guidelines as opposed to giving them greater specificity, can lead to several problems. Part of the purpose of the existing guidelines, however inadequate they may be, is to provide at least some degree of precision as to what each of the rights in the Covenant implies in legal terms. This is of special importance in view of the frequently heard criticism about the lack of specificity given to many economic, social and cultural rights. This vagueness may lead to States sensing they have more or less free rein in determining both what this right means and how to go about enforcing it, if indeed they choose to actively do so.

16) HIC feels quite strongly that broad guidelines such as those found in the draft proposal of the third session, if adopted by the Committee, may serve to trivialize the more detailed elements of the rights in question, including the right to adequate housing. For instance, in the draft revised guidelines, it is said that States should "...provide detailed statistics as to the extent to which the right to... is not currently enjoyed by all individuals." If no mutually agreed upon interpretation of a right exists, phrases such as these merely serve to reinforce the *status quo*. HIC sincerely hopes that the interest of efficiency and streamlining of efforts will not impede the true realization of the rights found in the Covenant.

Appendix V

Revised Guidelines Regarding the Form and Contents of Reports to be Submitted by States Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights

The Right to Adequate Housing

- a) Please furnish detailed statistical information about the housing situation in your country.
- b) Please provide detailed information about those groups within your society that are vulnerable and disadvantaged with regard to housing. Indicate, in particular:
 - i) The number of homeless individuals and families;
 - ii) The number of individuals and families currently inadequately housed and without ready access to basic amenities such as water, heating (if necessary), waste disposal, sanitation facilities, electricity, postal services, etc. (in so far as you consider these amenities relevant in your country). Include the number of people living in overcrowded, damp, structurally unsafe housing or other conditions which affect health;
 - iii) The number of persons currently classified as living in "illegal" settlements or housing;
 - iv) The number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction;
 - v) The number of persons whose housing expenses are above any government-set limit of affordability, based upon ability to pay or as a ratio of income;
 - vi) The number of persons on waiting lists for obtaining accommodation, the average length of waiting time and measures taken to decrease such lists as well as to assist those on such lists in finding temporary housing;
 - vii) The number of persons in different types of housing tenure by: social or public housing; private rental sector; owner-occupiers; "illegal" sector; and other.
- c) Please provide information on the existence of any laws affecting the realization of the right to housing, including:
 - i) Legislation which gives substance to the right to housing in terms of defining the content of this right;
 - ii) Legislation such as housing acts, homeless person acts, municipal corporation acts, etc;
 - iii) Legislation relevant to land use, land distribution, land allocation, land zoning, land ceilings, expropriations including provisions for compensation, land planning including procedures for community participation;
 - iv) Legislation concerning the rights of tenants to security of tenure, to protection from eviction, to housing finance and rental control (or subsidy), housing affordability, etc;
 - v) Legislation concerning building codes, building regulations and standards and the provision of infrastructure;
 - vi) Legislation prohibiting any and all forms of discrimination in the housing sector, including groups not traditionally protected;
 - vii) Legislation prohibiting any form of eviction;

- viii) Any legislative repeal or reform of existing laws which detracts from the fulfilment of the right to housing;
 - ix) Legislation restricting speculation on housing or property, particularly when such speculation has a negative impact on the fulfilment of housing rights for all sectors of society;
 - x) Legislative measures conferring legal title to those living in the "illegal" sector;
 - xi) Legislation concerning environmental planning and health in housing and human settlements.
- d) Please provide information on all other measures taken to fulfil the right to housing, including:
- i) Measures taken to encourage "enabling strategies" whereby local community based organizations and the "informal sector" can build housing and related services. Are such organizations free to operate? Do they receive Government funding?
 - ii) Measures taken by the State to build housing units and to increase other construction of affordable, rental housing;
 - iii) Measures taken to release unutilized, under-utilized or mis-utilized land;
 - iv) Financial measures taken by the State including details of the budget of the Ministry of Housing or other relevant Ministry as a percentage of the national budget;
 - v) Measures taken to ensure that international assistance for housing and human settlements is used to fulfil the needs of the most disadvantage groups;
 - vi) Measures taken to encourage the development of small and intermediate urban centres, especially at the rural level;
 - vii) Measures taken during, *inter alia*, urban renewal programmes, redevelopment project, site upgrading, preparation for international events (Olympics, expositions, conferences, etc.), "beautiful city" campaigns, etc., which guarantee protection from eviction or guaranteed rehousing based on mutual agreement, by any persons living on or near to affected sites;
- e) During the reporting period, have there been any changes in national policies, laws and practices negatively affecting the right to adequate housing? If so, please describe the changes and evaluate their impact.
- 4) Please give details on any difficulties or shortcomings encountered in the fulfilment of the rights enshrined in article 11 and on the measures taken to remedy these situations (if not already described in the present report).
- 5) Please indicate the role of international assistance in the full realization of the rights enshrined in article 11.

Appendix VI

Sources of the Right to Housing in International Human Rights Law

compiled by Scott Leckie

The United Nations Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights was adopted and proclaimed by United Nations General Assembly (Resolution 217A (III)) on December 10, 1948 (UN Doc.A/810(1948)). Article 25(1) states:

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

The United Nations International Covenant on Economic, Social and Cultural Rights, 1966

The International Covenant on Economic, Social and Cultural Rights was adopted and opened for signature, ratification and accession by UN General Assembly Resolution 2200A (XXI) on December 16, 1966 and entered into force on January 3, 1976 (21 UN GAOR, Supp.No.16, p.49). A total of 91 countries have ratified the Covenant. Article 11(1) states:

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

The United Nations International Convention on the Elimination of Racial Discrimination 1965

The International Convention on the Elimination of Racial Discrimination was adopted and opened for signature and ratification by United Nations General Assembly Resolution 2106A(XX) on December 21, 1965 and entered into force on January 4, 1969 (660 UNTS, p.1950). A total of 124 countries have ratified the Convention. 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 to 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) Economic, Social and Cultural Rights in particular...iii) the right to housing.

The United Nations Declaration on Social Progress and Development, 1969

The UN Declaration on Social Progress and Development was proclaimed by the UN General Assembly on December 11, 1969 (Resolution 2542(XXIV)). Part II 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.

The United Nations International Convention on the elimination of Discrimination Against Women, 1979

The International Convention on the Elimination of Discrimination Against Women was adopted and opened for signature, ratification and accession by UN General Assembly Resolution 34/180 on December 18, 1979 and entered into force on September 3, 1981 (UN Doc.A/RES/34/180). A total of 94 countries have ratified the Convention. 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 United Nations Declaration on the Rights of the Child, 1959

The UN Declaration on the Rights of the Child was proclaimed by the UN General Assembly on November 20, 1959 (resolution 1386(XIV)). 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.

Draft UN Convention of the Rights of the Child

The draft Convention on the Rights of the Child has not been adopted by the UN General Assembly. It is currently being refined and is expected to be adopted in 1989. Article 14(3) states:

The States Parties to the present Convention, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement the right to a standard of living adequate for the child's physical, spiritual, moral and social development and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

The Vancouver Declaration on Human Settlements, 1976

The Vancouver Declaration on Human Settlements was adopted by the United Nations Conference on Human Settlements in 1976 (UN Doc.A/CONF.70/15). 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 endeavour 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.

The United Nations Convention Relating to the Status of Refugees, 1951

The UN Convention relating to the Status of Refugees was adopted on July 28, 1951 by the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, convened under UN General Assembly Resolution 429(V) of December 14, 1950. The Convention entered into force on April 22, 1954. Article 21 states:

As regards housing, the Contracting States, in so far as the matter is regulated by laws or

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regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

The Charter of the Organization of American States, 1948

The OAS Charter was adopted in Bogota on April 30, 1948. Article 31(k) states:

To accelerate their economic and social development, in accordance with their own methods and procedures and within the framework of the democratic principles and the institutions of 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.

Appendix VII

Useful NGO Addresses

1) International Organizations

Habitat International Coalition (HIC)

Cordobanes No.24
Col. San Jose Insurgentes
03900 Mexico, D.F.
Mexico

Homeless International

PO Box 168
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THE HUMAN SETTLEMENTS PROGRAMME

The Human Settlements Programme is a multi-disciplinary programme whose work includes research, evaluation, technical assistance, seminars, publications and, in recent years, training. It focuses on housing, basic services, the human environment, urban change and other issues relevant to human settlements. Since its inception in 1977, the Programme has been implemented through collaborative work programmes with a network of research institutions and NGOs in Africa, Asia and Latin America. Its work is coordinated by staff at IIED-América Latina in Buenos Aires and IIED's London office. The main areas of work are:

* **Increasing the scale of funding for community level initiatives.** This focuses on two particular aspects of the current and potential role of Third World NGOs and other intermediary institutions: funding and supporting low income communities in the development of housing, infrastructure and services; and credit for low income households in the acquisition, building or improvement of their housing. IIED-América Latina is also evaluating the role of Latin American NGOs in the construction and maintenance of cities - especially their work with low income groups and community organizations. Together with the Economic Development Institute, Washington DC, it is running a training programme for NGOs in the region to increase their capacity to implement community-based initiatives. A special unit within IIED-América Latina has been set up to work with an illegal settlement on the periphery of Buenos Aires to improve conditions, provide basic services and support the inhabitants' own capacity to address local problems.

* **Environmental problems of Third World cities.** For some years, the programme has been researching environmental problems as they affect the health of low income groups, especially for those living in illegal settlements or tenements, and the kinds of programmes needed to tackle their most pressing health problems. A more comprehensive study of environmental problems in selected cities is now underway, in collaboration with Mazingira Institute (Kenya), the Lagos Group for the Study of Human Settlements (Nigeria), and the Centre for Science and Environment and the Muslim University in Aligarh (India).

* **Strengthening the voice of the Third World.** The Programme produces two journals: *Medio Ambiente y Urbanización* (a quarterly, now in its tenth year of publication) published in Buenos Aires and *Environment and Urbanization* (twice a year and launched in 1989) published in London. Both give priority to contributions from people in research groups, NGOs and teaching and training institutions based in Africa, Asia or Latin America. NGOs and teaching/training institutions in these regions can obtain the journals at concessionary prices. Both journals include details of publications by Third World groups while *Environment and Urbanization* also publishes profiles of Third World NGOs.

* **Sustainable development.** Staff from the Programme have been working with the World Health Organization, the U.N. Centre for Human Settlements and UNICEF in identifying the health, development and human settlements components of sustainable development; these usually receive little attention within most discussions of this subject. IIED-América Latina is also working with the Centre for Advanced Studies at the University of Buenos Aires and the Bariloche Foundation's Group for the Analysis of Ecological Systems to evaluate whether current trends in Argentina are sustainable and the lines of action needed to promote sustainable development. This is part of a larger IIED programme which includes comparable studies by institutions in Pakistan, Zimbabwe, Nigeria and Indonesia.

* **Aid for basic needs and urban development.** An evaluation of the extent to which aid is directed to improving poorer groups' housing and living conditions and the provision of services and community facilities and to building city governments' capacity to plan, manage and invest in urban infrastructure and services. This includes the development of two computer databases: the first on annual expenditures for total development assistance by agency and by nation; and the second with details of all basic needs and urban development projects.

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