

### **ONU-Habitat**

UN-Habitat is the United Nations agency for human settlements. It is mandated by the UN General Assembly to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all. UN-HABITAT's strategic vision is anchored in a four-pillar strategy aimed at attaining the goal of Cities without Slums. This strategy consists of advocacy of global norms, analysis of information, field-testing of solutions and financing. These fall under the four core functions assigned to the agency by world governments - monitoring and research, policy development, capacity building and financing for housing and urban development. [www.unhabitat.org](http://www.unhabitat.org)

# **THE RIGHT TO HOUSING**

*A fundamental human right affirmed by the  
United Nations and recognized in regional treaties  
and numerous national constitutions*

*Brochure prepared by*

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Europe-Third World Centre (CETIM)**

## INTRODUCTION

The right to adequate housing is a universal right, recognized at the international level and in more than one hundred national constitutions throughout the world. It is a right recognized as valid for every individual person.

In spite of this right, the homeless, the inadequately housed, and the evicted are more and more numerous in the cities and the countryside across the planet. More than 4 million persons were evicted from their homes between 2003 and 2006.<sup>1</sup> In today's world, some 100 million persons are homeless and more than a billion are inadequately housed. According to the estimates of the United Nations, 3 billion persons will be living in slums in 2050.<sup>2</sup> Most of these persons live in countries of the South, but no continent is, nor will be, spared.

Beyond the problems of housing, strictly speaking (having a roof over one's head), what is most worrying is the *condition that housing may be in*. More than a billion persons throughout the world have no access to potable water, and 2.6 billion persons have no access to basic sanitary installations. These persons live in unhealthy and unworthy conditions; millions among them die each year, including some 1.8 million children who die of diarrhea.<sup>3</sup>

As important as they may be, sanitary conditions are not the only housing problem. The denial, de jure or de facto, of the right to adequate housing brings in its wake dramatic consequences and causes numerous violations of human rights in such areas as employment, education, health, social ties, participation in decision-making (denial of civil rights, among others) etc.

Although two world conferences specifically devoted to questions of housing and related summits (on development, environment etc.), all organized by the United Nations during the three preceding decades, have provided an opportunity to sensitize public opinion to the seriousness of the situation, there has been no follow up to the declarations and actions plans adopted.

The Millennium Declaration, adopted 13 September 2000 by the U.N. General Assembly is no exception to this. Moreover, it does not deal with structural causes of poverty in the world,<sup>4</sup> and the two Millennium Goals related to the question of housing are timid, indeed: considerably improve the life of at least

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**Committee on Migrant Workers, CMW** (information). Office of the High Commissioner for Human Rights, avenue de la Paix 8-14, CH-1211 Geneva 10, Switzerland. Fax: +4122 9179022. E-mail: cedelenbos@ohchr.org

### At the regional level

**African Commission on Human and People's Rights** (to file complaints and request information). Avenue Kairaba, P.O. Box 673, Banjul, Gambia. Tel.: +220 4392962 Fax : +220 4390764. E-mail: achpr@achpr.org

**Inter-American Commission on Human Rights** (to file complaints and request information). Organization of American States. 1889 F Street, N.W., Washington, D.C. 20006, USA. Fax: +202 458-3992. E-mail: cidhoea@oas.org

**Inter-American Court of Human Rights** (to file complaints). Corte Interamericana de Derechos Humanos, Avenida 10, Calles 45 y 47 Los Yoses, San Pedro, Apartado Postal 6906-1000, San José, Costa Rica. Tel.: +506 2340581. Fax: +506 2340584. E-mail: corteidh@cortheidh.or.cr

**European Committee of Social Rights** (to file collective complaints and request information). Secretariat of the European Social Charter Directorate General of Human Rights – DG II, Avenue de l'Europe, 67075, Strasbourg Cedex, France. Tél.: +333 88413258 Fax: +333 88413700. E-mail: social.charter@coe.int. Web: www.coe.int

**European Court of Human Rights** (to file complaints). Council of Europe, Avenue de l'Europe, 67075 Strasbourg Cedex, France. Tel.: +333 88412018. Fax: +333 88412730. Web: www.coe.int

### THREE RELEVANT ADDRESSES

#### Habitat International Coalition (HIC)

Habitat International Coalition is a world wide coalition of NGOs that was created in 1976 to monitor compliance of the commitments made by governments at the United Nations Conference on Human Settlements in Vancouver 1976. It plays a major civil society role at international meetings on housing, such as, for example at the Istanbul Conference on Human Settlements (1996) and at the World Urban Forums in Nairobi (2002) and in Barcelona (2004). The Coalition has produced several reference documents promoted by NGOs, such as the World Charter for the Right to the City, which aims to support movements for decent housing in urban centers. The Coalition has also carried out a large number of field missions to denounce violations of the right to adequate housing throughout the world. [www.hic-net.org](http://www.hic-net.org)

#### Center for Housing Rights and Evictions (COHRE)

COHRE is an organization for the defense of human rights that works essentially for the promotion and respect of the right to adequate housing. In its struggle for the realization of this right, COHRE has several approaches: training and legal aid for NGOs and local associations; the use of national, regional, and international mechanisms; the prevention and the control of forced evictions carried out with the support of an action network; investigative missions in the field; lobbying of government officials and the United Nations; research and publication of reference works on the right to adequate housing. [www.cohre.org](http://www.cohre.org)

<sup>1</sup> According to the NGO Center on Housing Rights and Evictions (COHRE), more than 4 million persons were victims of evictions between 2003 and 2006 - 2 million in Africa, 2.1 million in Asia and the Pacific region, more than 150,000 in the Americas, and 16,000 in Europe. COHRE, *Forced Evictions: Violations of Human Rights*, December 2006: [www.cohre.org/store?attachments/GLOBAL%20SURBVEY%202003-2006.pdf](http://www.cohre.org/store?attachments/GLOBAL%20SURBVEY%202003-2006.pdf)

<sup>2</sup> UN-Habitat, *A Safe City is a Just City*, World Habitat Day 2007:

<http://www.unhabitat.org/categories.asp?catid=534>

<sup>3</sup> UNDP, *Human Development Report 2006, Beyond scarcity: Power, poverty and the global and the global water crisis*, "Forward": <http://hdr.undp.org/hdr2006/pdfs/report/HDR06-complete.pdf>

<sup>4</sup> Cf. *The Right to Development*, CETIM, Geneva, June 2007.

## Main Reference Websites and Instances to Which One May Recur

### MAIN REFERENCE WEBSITES

Office of the High Commissioner for Human Rights: [www.ohchr.org](http://www.ohchr.org)  
ONU-Habitat: [www.unhabitat.org](http://www.unhabitat.org)  
Inter-American Commission on Human Rights: [www.cidh.oas.org](http://www.cidh.oas.org)  
African Union: [www.africa-union.org](http://www.africa-union.org)  
African Commission on Human and People's Rights: [www.achpr.org](http://www.achpr.org)  
Council of Europe: [www.coe.int](http://www.coe.int)  
European Union: <http://europa.eu.int>  
Association internationale des techniciens, experts et chercheurs (AITEC):  
<http://aitec.reseau-ipam.org/>  
Asian Coalition for Housing Rights (ACHR): [www.achr.net](http://www.achr.net)  
Center on housing rights and evictions: [www.cohre.org](http://www.cohre.org)  
Habitat International Coalition: [www.hic-int.org](http://www.hic-int.org)  
Emmaus International: [www.emmaus-international.org](http://www.emmaus-international.org)  
European Federation of National Organisations working with the Homeless (FEANTSA): [www.feantsa.org](http://www.feantsa.org)  
L'Association Internet pour la promotion des droits de l'homme (AIDH) :  
[www.droitshumains.org](http://www.droitshumains.org)

### INSTANCES TO WHICH ONE MAY RECUR

#### At the international level

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Committee on Economic, Social and Cultural Rights, CODESC (to request information). Office of the High Commissioner for Human Rights Avenue de la Paix 8-14, CH-1211 Geneva 10, Switzerland. Fax: +4122 9179046/9179022. E-mail: [wlee@ohchr.org](mailto:wlee@ohchr.org)

**Committee on the Elimination of Discrimination Against Women, CEDAW** (to file complaints and request information). United Nations, 2 UN Plaza, DC2-12th Floor, New York, NY, 10017, USA. Fax: +1212 9633463. E-mail: [daw@un.org](mailto:daw@un.org); [tb-petitions@ohchr.org](mailto:tb-petitions@ohchr.org). Web: [www.un.org/womenwatch/daw](http://www.un.org/womenwatch/daw)

**Committee on the Elimination of Racial Discrimination, CERD** (to file complaints and request information). Office of the High Commissioner for Human Rights, avenue de la Paix 8-14, CH-1211 Geneva 10, Switzerland. Fax: +4122 9179022. E-mail: [nprouvez@ohchr.org](mailto:nprouvez@ohchr.org); [tb-petitions@ohchr.org](mailto:tb-petitions@ohchr.org)

**Committee on the Rights of the Child, CRC** (to request information). Office of the High Commissioner for Human Rights, avenue de la Paix 8-14, CH-1211 Geneva 10, Switzerland. Fax: +4122 9179022. E-mail: [pdavid@ohchr.org](mailto:pdavid@ohchr.org)

**Human Rights Committee, HRC** (to file complaints and request information). Office of the High Commissioner for Human Rights, avenue de la Paix 8-14, CH-1211 Geneva 10, Switzerland. Fax: +4122 9179022. E-mail: [tb-petitions@ohchr.org](mailto:tb-petitions@ohchr.org)

100 million slum dwellers by 2020, and reduce by half the proportion of persons who have no access to potable water by 2015.<sup>5</sup>

These goals are insufficient, and it is more and more generally admitted that the Millennium Goals overall will not be reached within the allotted time frame. Worse, the proposed approach for reaching them - increasing financing for the construction of new housing for the poorest - is largely inadequate. What is needed in order to realize the right of all to adequate housing is to attack the deep rooted causes of non-access to housing throughout the world. These causes have been identified by the United Nations

Special Rapporteur on the Right to Adequate Housing, Miloon Kothari. They include, in particular: land and property speculation; expropriations and forced evictions; the rural exodus and the growth of slums; discrimination against vulnerable groups, including women, children, refugees, migrants, the elderly and the handicapped; the negative effects of the privatization of public services.<sup>6</sup>

In other words, demanding the right to adequate housing implies fighting for the inclusion of the most vulnerable people in society and forcing governments to respect their legal obligation to guarantee a life of dignity. This implies also fighting forced evictions, illegal in international law but of which hundreds of thousands of persons are victims every year.

It is not possible to treat all the aspects and implications of the right to adequate housing in the scope of the present brochure, which aims primarily to:

- contribute to the improvement of available information on the right to adequate housing;
- present examples of implementation of the right to adequate housing on the national level;
- point out what monitoring mechanisms are available on the international, regional and national level for use by victims of violations of their right to adequate housing.

All movements and social groups as well as NGOs that defend the homeless, the inadequately housed and the evicted are well acquainted with the international instruments and their use at the national level. This brochure aims to accompany them in their daily struggle to demand respect for the right to adequate housing.

The first part of the brochure deals with the definition and the content of the right to adequate housing. The second part discusses the recognition of the right to housing at the international, regional and nation levels. The third part deals with the obligations of governments and the implementation of these rights at the national level. The fourth part explores the redress mechanisms available at the national, regional and international levels for the protection of vulnerable persons or groups of persons whose right to adequate housing has been violated.

<sup>5</sup> A/RES/55/2: <http://www.un.org/millennium/declaration/ares552e.htm>

<sup>6</sup> Annual reports of the United Nations Special Rapporteur on the Right to Adequate Housing to the Commission on Human Rights (2001 to 2005) and to the Human Rights Council (since 2006): E/CN.4/2001/51, E/CN.4/2002/59, E/CN.4/2003/5, E/CN.4/2004/48, E/CN.4/2005/48, E/CN.4/2006/41, A/HRC/4/18: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=98](http://ap.ohchr.org/documents/dpage_e.aspx?m=98)

## I. DEFINITION AND CONTENT OF THE RIGHT TO ADEQUATE HOUSING

### A) The Committee on Economic, Social and Cultural Rights

For the Committee on Economic, Social and Cultural Rights, the principal U.N. body entrusted with overseeing the realization by governments of the right to adequate housing, “the right to housing should not be interpreted in a narrow or restricted sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.”<sup>7</sup>

Housing corresponds to international law if certain minimal elements are guaranteed at all times:

- legal security of tenure, including protection against forced eviction;
- availability of services, materials, facilities and infrastructure, including access to safe drinking water and sanitation;
- affordability, including for the poorest, through housing subsidies, protection against unreasonable rent levels or rent increases;
- habitability, including protection from cold, damp, heat, rain, wind and disease vectors;
- accessibility for disadvantaged groups, including to the elderly, children, the physically disabled, the terminally ill and victims of natural disasters;
- location, far from polluted sites or pollution sources but near to health-care services, schools, child-care centers and other social facilities.<sup>8</sup>

The Committee has repeatedly emphasized the prohibition of forced evictions. In its General Comment No. 7, it defined forced eviction as:

*“the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”*<sup>9</sup>  
*For the Committee, forced evictions are prima facie incompatible with the obligations of the International Covenant on Economic, Social and Cultural Rights and “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”*<sup>10</sup>

<sup>7</sup> V. Annex 1, *General Comment No. 4 on the right to adequate housing (Article 11, § 1)*, § 7, adopted 13 December 1991.

<sup>8</sup> *Ibid.*, § 8.

<sup>9</sup> V. Annex 2, *General Comment 7 on the right to adequate housing: forced evictions (Article 11, § 1)*, § 3, adopted 20 May 1997.

<sup>10</sup> *Ibid.*, § 1.

### 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.

### Venezuela (1999)

#### Article 82

Every person shall be entitled to *housing* that is suitable, comfortable, clean, provided with essential services and conducive to carrying on in a humane manner family, neighborly and community relations. The progressive realization of this right shall be a responsibility shared by the citizens and the government. The government shall give priority to families and shall guarantee them, especially those of limited means, the means to accede to social programs and to credit for the construction, acquisition or enlargement of their *dwellings*.

### Viet Nam (1992)

#### Article 58

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

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

#### **Seychelles (1993)**

##### Article 34

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

#### **Slovenia (1991)**

##### Article 78

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

#### **Spain (1978)**

##### Article 47

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

#### **Sri Lanka (1977)**

##### Article 27

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

#### **Switzerland (1999)**

##### Article 41

1. The Confederation and the Cantons shall strive to ensure that, in addition to personal responsibility and private initiative: (e) every person looking for housing shall find, for himself or herself and his or her family, appropriate housing at reasonable conditions.

##### Article 108

1. The Confederation shall encourage the construction and the ownership of housing for private persons' own use, and the activity of developers and organisations for social housing.

2. It shall promote, in particular, the acquisition and development of land, the efficiency of construction, and the reduction of construction and housing costs. (...)

4. In fulfilling this task, it shall, in particular, take into account the interests of families and elderly, needy, and disabled persons.

#### **Suriname (1987)**

##### Article 49

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

## **B) The Special Rapporteur on the Right to Adequate Housing**

For the United Nations Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, "the human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity."<sup>11</sup>

The Special Rapporteur emphasizes that the realization of the right to adequate housing is intimately linked to the realization of other basic human rights, such as the right to life, the right to protection of one's private life, of one's family and one's home, the right to not be subjected to inhuman or degrading treatment, the right to land, the right to food, the right to water and the right to health. He has also insisted that its realization is tied to respect of the fundamental principles of non-discrimination and gender equality.<sup>12</sup>

As a complement to the work of the Committee on Economic, Social and Cultural Rights, the Special Rapporteur has drafted indicators for the right to housing<sup>13</sup> and criteria for their implementation.<sup>14</sup>

In several of his reports, the Special Rapporteur on the Right to Adequate Housing has also insisted on the prohibition of forced evictions<sup>15</sup> and on the obligation to help the homeless.<sup>16</sup> He has recently drafted *Basic Principles on Development-Based Evictions and Displacements*<sup>17</sup> which complete the *Guiding Principles on Internal Displacement* dealing with displacements due to armed conflict or natural disasters and which we have presented in an earlier brochure.<sup>18</sup>

Moreover, the Special Rapporteur has devoted studies to "women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing",<sup>19</sup> studies in which he analyses the obstacles to

<sup>11</sup> Report of the Special Rapporteur on the Right to Adequate Housing to the 57<sup>th</sup> Commission on Human Rights, E/CN.4/2001/51, § 8, 25 January 2001.

<sup>12</sup> See note 6.

<sup>13</sup> V. Annex II of his annual report presented to the 4<sup>th</sup> session of the Human Rights Council, A/HRC/4/18, 5 February 2007.

<sup>14</sup> These are: 1. security of tenure; 2. public goods and services; 3. environmental goods and services (including land and water); 4. affordability (including access to finance); 5. habitability; 6. accessibility (physical); 7. location; 8. cultural appropriateness; 9. freedom from dispossession; 10. information, capacity and capacity-building; 11. participation and self-expression; 12. resettlement; 13. safe environment; 14. security (physical) and privacy. V. the annual report of the Special Rapporteur to the 59<sup>th</sup> Commission on Human Rights, E/CN.4/2003/5, 3 March 2003, § 51.

<sup>15</sup> E/CN.4/2004/48: <http://daccessdds.un.org/doc/UNDOC/GEN/G04/115/83/PDF/G0411583.pdf> See also Fact Sheet No 25 of the Office of The U.N. High Commissioner for Human Rights, *Forced Evictions and Human Rights*: <http://www.unhcr.ch/html/menue6/2/fs25.htm>

<sup>16</sup> E/CN.4/2004/48, *Ibid*.

<sup>17</sup> Presented to the 4<sup>th</sup> session of the Human Rights Council, A/HRC/4/18, §§ 21-24: <http://daccessdds.un.org/doc/UNDOC/GEN/G04/115/83/PDF/G0411583.pdf>

<sup>18</sup> V. our brochure *Internally Displaced Persons*: [http://www.cetim.ch/en/publications\\_details.php?currentyear=&pid=144](http://www.cetim.ch/en/publications_details.php?currentyear=&pid=144)

<sup>19</sup> V. Resolution of the Commission on Human Rights 2002/49.

effective realization of the rights of women in housing, such as “violence against women, the discriminatory cultural and social norms and family and personal laws, multiple discrimination, privatization and unaffordability of housing for women, and the impacts of natural disasters, forced evictions and HIV/AIDS on women”.<sup>20</sup>

### C) ONU-Habitat

For the U. N. Commission on Human Settlements (UN-Habitat)<sup>21</sup> and the Global Strategy for Shelter,<sup>22</sup> “shelter for all” means affordable shelter for all groups in all types of settlements, meeting the basic requirements of affordability, tenurial security, structural stability and infrastructural support, with convenient access to employment and community services and facilities”.<sup>23</sup>

It is to be emphasized that the U.N. has organized two world conferences (in 1976 in Vancouver and in 1996 in Istanbul) on human settlements during which declarations and action plans were adopted with the purpose of solving the problems of adequate housing in the world (v. also Chapter II.A).

promote adequate employment opportunity to such citizens. In the implementation of such programs the State shall respect the rights of small property owners.

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

#### Poland (1997)

##### Article 75

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

#### 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.

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

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

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 Korea (1948)

##### Article 35

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

#### Russian Federation (1993)

##### Article 40

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

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

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

#### Sao Tome and Principe (1975)

##### Article 48

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

<sup>20</sup> E/CN.4/2006/118.

<sup>21</sup> In 2002 the U.N. Commission on Human Settlements became the Governing Council of the United Nations Human Settlements Program, was renamed “UN-Habitat” and was placed under the authority of the General Assembly. V. General Assembly resolution A/RES/56/206, adopted 21 December 2001.

<sup>22</sup> The Global Strategy for Shelter was officially launched 16 February 1989 in New York at U.N. headquarters, with the purpose of “shelter for all by the year 2000”. V. A/RES/43/181 adopted 20 December 1988: <http://www.un.org/documents/ga/res/43/a43r181.htm>.

<sup>23</sup> First report of the Commission on Human Settlements on the implementation of the Global Strategy for Shelter to the year 2000, § 2, A/43/8/Add.1, adopted 6 June 1988.

food, water supply, reasonable national minimum living wage, old age and pensions, unemployment, and sick benefits and welfare for the disabled are provided for all citizens.

#### **Pakistan (1990)**

Article 38 (d)

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

#### **Panama (1978)**

Article 113

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

#### **Paraguay (1992)**

Article 57

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

Article 59

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

Article 100

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

#### **Peru (1993)**

Article 195

8. Local governments shall favor development and the local economy, as well as the furnishing of public services coming under their purview, in harmony with national and regional development policies and plans. Their responsibilities shall be: develop and regulate activities and/or services in education, health, *housing*, sanitation, environment, use of natural resources, public transports, vehicular traffic, tourism, conservation of archaeological and historical monuments, culture, leisure time and sports, all in conformity with the law.

#### **Philippines (1986)**

Article 13

9. The State shall be law, and for the common good, undertake, in co-operation with the private sector, a continuing programme of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centres and resettlement areas. It shall also

## **Illustration n° 1**

### **Forced Evictions**

More than a million persons are victims of forced evictions every year. Such evictions are the result of armed conflicts but also of development projects, urban modernization or the organization of mega-events among which the Olympic Games are an outstanding example.

Dams constructed for “development” are the cause of hundreds of thousands of expulsions and forced displacements every year. In Turkey, for example, the construction of the Ilisu dam on the Tigris River (in Turkish Kurdistan) has entailed the forced expulsion of more than 50,000 Kurds.

In India, urban modernization has resulted in massive expulsions of populations living in slums. The “rehabilitation” project of the Dharavi slum in Bombay, one of the biggest in Asia, is particularly disturbing. It could result in the expulsion of more than 300,000 persons in several months.

In China, the city of Beijing has been profoundly transformed in preparation for the 2008 Olympic Games, producing the forced displacement of hundreds of thousands of persons, most arbitrarily and with no possibility of redress.

The modernization of the city of Brussels (Belgium), to allow for the building of the headquarters of the European Union, also brought about numerous expulsions starting in 1958, with no effort made to involve the inhabitants and merchants, opening the way to real estate speculation.

In Europe, thousands of persons, such as the Roms and squatters, have also been victims of forced expulsions each year because their legal status is precarious. Several squatter settlements, for example, were forcefully evicted with no advance notice nor possible appeal in Geneva (Switzerland), in July 2007.

Sources:

- Report of the U.N. Special Rapporteur on the Right to Food, Jean Ziegler, communications sent to governments and other stake holders and their responses, A/HRC/4/30/Add.1: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/103/43/PDF/G0710343.pdf>
- *Le Monde*, “A vendre : Dharavi, bidonville, 214 hectares”, 19 July 2007.
- *L’installation de l’Union européenne dans la ville de Bruxelles: Impact et mobilisation des habitants (1958-2003)*, January 2004, <http://www.habitat-participation.be/www/rapport/PUBLICATION%202004/Union%20euro%20et%20mobilisation%20habitants%20-%20Rapport.pdf>
- According to the COHRE, more than 400,000 persons have been displaced as of 1 July 2007, and more than a million will have been displaced by the beginning of the Olympic Games. The COHRE emphasizes that this situation is comparable to the preparations for the 1988 Seoul Olympic Games, during which 720,000 persons were forcefully displaced. COHRE, *Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights*, 2007: <http://www.cohre.org/store/attachments/COHRE%27s%20Olympics%20Report.pdf>.

## Illustration n°2

### **Urbanization, right to adequate housing and the right to the city**

The development of cities - and especially of large and very large cities - was the salient characteristic of urbanization in the last century. Urban growth is a world wide phenomenon. According to various estimates, accelerated urbanization, begun in the 1950s, will produce an overall urbanization level of 65% by 2050.

Today's city is the product of neo-liberal globalization. It is supposed to be "useful" in that it offers urban infrastructures and services likely to attract investors, to promote high levels of productivity and to assure social peace. In the countries of the South, the plethora of social, economic, technical and political challenges that cities have had to face are due to urbanization that has been subjected to almost no regulation.

While it is broadly acknowledged that cities, particularly the biggest, are the motor of economic growth, it is nonetheless appropriate to question the nature of these cities and the consequences this new configuration generates within today's societies. The urban concentration that accompanies the concentration of capital upsets the town-country balance and, more generally, that between urbanized areas and the overall territorial context within which they are located. It leads to new urban forms that manifest increasing inequalities in the distribution of wealth: private cities and luxury ghettos sit side by side with impoverished neighborhoods.

Efforts to exploit cities by putting them at the service of the market tend to empty them of their traditional and indispensable political dimension. In this way, the residents have become simple economic agents who must now reassert their right to urban citizenship.

The world's civil society movement has emerged in this context to combat the inequalities engendered by this system: social, political, economic and ecological inequalities. Access for all to economic, social and cultural rights must be demanded.

It is also in this context, at the beginning of the twenty-first century, that the world's civil society movement launched the "right to the city" movement. In the words of Jean-François Tribillon, "the right to the city means benefiting from adequate housing, having a decently paid job, being able to be surrounded by one's family, living safe from police harassment, and, more specifically, living in a beautiful city that is convenient, healthy and respectful of the environment".

At the Americas Social Forum (Quito, July 2004) and the World Urban Forum (Barcelona, September 2004), social movements launched a World Charter of the Right to the City calling for "a democratic management of the city" (Art. II, § 1), with a chapter devoted to the "right to shelter" (Art. XIV).

For his part, the U.N. Special Rapporteur on the Right to Adequate Housing has explored the question of a participatory budget in certain cities (in the South Common Market, Mercosur), which "experiments with new strategies of improving housing and living conditions of the poor".

The government is responsible for laying the groundwork to accomplish this, with the first consideration given to those who are in need, in particular villagers and labourers.

#### **Article 43**

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

#### **Italy (1947)**

##### **Article 47**

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

#### **Mali (1992)**

##### **Article 17**

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

#### **Mexico (1983)**

##### **Article 4**

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

#### **Netherlands (1984)**

##### **Article 22**

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

#### **Nepal (1990)**

##### **Article 26**

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

#### **Nicaragua (1987)**

##### **Article 64**

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

#### **Nigeria (1989)**

##### **Article 17**

2. (d) The state shall direct its policy toward ensuring that suitable and adequate *shelter*,

Article 119 (g)

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

**Guyana (1980)**

Article 26

Every citizen has the right to proper *housing* accommodation.

**Haiti (1987)**

Article 22

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

**Honduras (1982)**

Article 118

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

Article 123

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

Article 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.

**India (1949)**

Article 39

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.

**Iran (1980)**

Article 3

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

Article 31

A suitable *dwelling*, according to need, is the right of every Iranian person and family.

In one of his annual reports, he studied several cases:

"In Porto Alegre [Brazil], residents and city officials claim that the participatory budget process has not only made a marked difference in living conditions but, more importantly, has had an empowering effect on the poor. In Montevideo [Uruguay], pro-poor policies and programs adopted by the city, without central government support and despite economic downturn, have led to closing the precipitous gaps between low-income groups and the rest of the city's population, including by: extending sanitation to over 90 per cent of residences; providing public transportation to all of the city's peripheral settlements; purchasing over 220 hectares of centrally located urban land and allocating them for construction of low-income housing; and establishing low-cost material banks and technical assistance centers. Rosario [Argentina] has declared itself a "human rights city" and committed to openness, transparency and accountability. The city government submits to scrutiny by a committee of citizens which continuously examines Rosario's obligations and commitments under international law, recommends actions and organizes human rights training."

In Europe, several dozen mayors of European cities adopted, on 18 May 2000, in Saint-Denis (France), A European Charter of Human Rights in the City. They wanted to extend the scope of the Engagement that they had signed in October 1998 in Barcelona: define on the municipal level some of the fundamental human rights and translate them into action.

By drafting this Charter, the European cities intend to put into effect "in a context of territorial proximity" the founding principles of the Universal Declaration of Human Rights adopted by the United Nations in 1948. The initiators of this text wish to put the "aspirations of the citizenry" at the center of the projects of cities - cities that can transform themselves into spaces particularly appropriate for social innovation, for the practice of solidarity and for resistance to an economic globalization deemed too neo-liberal.

Sources :

- Association Internationale des Techniciens, Experts et Chercheurs (AITEC), <http://aitec.reseau-ipam.org/spip.php?rubrique6>
- Report of the U.N. Special Rapporteur on the Right to Adequate Housing, presented to the 59<sup>th</sup> session of the Commission on Human Rights, 3 March 2003, E/CN.4/2003/5, §§ 47 to 49: <http://daccessdds.un.org/doc/UNDOC/GEN/G03/113/62/PDF/G0311362.pdf>
- Association Internet pour la promotion des droits de l'homme (AIDH): [http://www.aidh.org/Europe/Charte\\_des\\_DH.htm](http://www.aidh.org/Europe/Charte_des_DH.htm)

## II. PERTINENT REGIONAL AND INTERNATIONAL TEXTS

The right to adequate housing has been recognized in numerous texts at both the international and the regional level. At the international level, the two most important texts are the 1948 *Universal Declaration of Human Rights* and the 1966 *International Covenant on Economic, Social and Cultural Rights*. At the regional level, the most important texts are the European Social Charter, revised in 1996, and various African instruments for the protection of the rights of the child and of women (see below).

### A) At the International Level<sup>24</sup>

#### 1. *The Universal Declaration of Human Rights (1948)*

The right to adequate housing was recognized for the first time at the international level in the 1948 Universal Declaration of Human Rights. In this declaration, the states parties proclaimed that:

*“Everyone has the right to a standard of living adequate for the health and well-being of himself and 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 lack of livelihood in circumstances beyond his control.” (Art. 25)*

The strength of the Universal Declaration of Human Rights lies in its having been accepted by all countries.

#### 2. *The International Covenant on Economic, Social and Cultural Rights (1966)*

In 1966, almost 20 years after the Universal Declaration of Human Rights, United Nations member states adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR), in which they recognized the right to adequate housing. In Article 11, governments committed themselves to taking necessary measures to realize:

*“the right of everyone to an adequate standard of living for himself and his family, including... 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.”*

<sup>24</sup> For the recognition of the right to adequate housing on the international level, see UN-Habitat and the Office of the U.N. High Commissioner for Human Rights (OHCHR), *Housing rights legislation: review of international and national legal instruments*, 2002: <http://huchen.org/eng/about/publications/docs/housing.pdf>; also OHCHR, *Fact Sheet No 21, The Human Right to Adequate Housing*: <http://www.ohchr.org/english/about/publications/docs/fs21.htm>

### Ecuador (1998)

#### Article 23

Without prejudice to the rights established in this Constitution, nor to those in the international instruments in force, the government recognizes and guarantees to all persons the following: the right to a quality of life assuring good health, sufficient nutritious food, potable water, a healthy environment, education, work, a job, leisure time, housing, clothing and other necessary social amenities.

#### Article 32

To implement the right to adequate housing and to the protection of the environment, the municipalities shall have the right to expropriate, reserve and control areas for future development in conformity with existing legal provisions. The government shall favor housing programs that are in the public interest.

### Equatorial Guinea (1995)

#### Article 13

Every citizen shall enjoy the followings freedoms: free movement and *residence*.

### El Salvador (1984)

#### Article 51

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

#### Article 119

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

### Finland (1999)

#### Article 19

The government shall favor the right of everyone to *adequate housing* and shall support personal efforts in the pursuit of housing.

### Greece (1975)

#### Article 21

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

### Guatemala (1985)

#### Article 105

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

persons and in social cases, artistic and scientific creation shall constitute the social and cultural rights recognised by the present Constitution which aims to promote them.

#### **Cambodia (1993)**

Article 31

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

#### **Colombia (1991)**

Article 51

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

Article 64

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

#### **Congo (2005)**

Article 48

The right to decent housing, the right to access to potable water and to electric energy shall be guaranteed. Enabling legislation shall be enacted to assure the enjoyment of these rights.

#### **Costa Rica (1949)**

Article 65

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

#### **Democratic People's Republic of Korea (1972)**

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 cooperative farmers.

#### **Dominican Republic (1966)**

Article 8

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.

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.

### **3. The International Covenant on Civil and Political Rights (1966)**

The same year, member states adopted the International Covenant on Civil and Political Rights, in which they recognized the right to life (Article 6), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7) and the right not to be subjected to arbitrary or unlawful interference in one's privacy, family or home (Article 17).

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights are *treaties*. They are legally binding on all states parties (156 and 160 in number, respectively) that have ratified them.<sup>25</sup>

### **4. Conventions Protecting Particularly Vulnerable Groups**

The right to adequate housing is everybody's right, without discrimination. The fundamental right was established in the *International Convention on the Elimination of All forms of Racial Discrimination* (1965), in which the states parties committed themselves

*"to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of... the right to housing."* (Article 5, e, ii)

However, to protect particularly vulnerable groups, such as women, children, the elderly, indigenous and tribal peoples, refugees or stateless persons, other treaties have been accepted by countries at the international level:

#### **Women**

The right to adequate housing for women was recognized in the *Convention on the Elimination of all Forms of Discrimination against Women* (1979). According to Article 14, § 2(h), the states parties commit themselves to:

*"to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women... adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications".*

#### **Children**

In the *Convention on the Rights of the Child*, the states parties commit themselves to helping parents or other persons in charge of the child, particularly in providing shelter. Its Article 27, § 3, provides that:

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

<sup>25</sup> The list of countries is available on the internet site of Office of the U.N. High Commissioner for Human Rights: <http://www.ohchr.org/english/countries/ratification/index.htm>.

## Recognition of the Right to Adequate Housing in National Constitutions<sup>85</sup>

### Armenia (1995)

#### Article 31

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

### Bahrain (1973)

#### Article 9(f)

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

### Bangladesh (1972)

#### Article 15

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

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

### Belgium (1994)

#### Article 23

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

### Bolivia (1967)

#### Article 199

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

### Burkina Faso (1991)

#### Article 18

Education, instruction, formation, employment, social security, *housing*, leisure, health, protection of motherhood and of infancy, assistance to the aged or handicapped

### Tribal and Indigenous Peoples

Common Article 1, § 2, of the 1966 International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights, which applies to tribal and indigenous peoples, provides that:

*"In no case may a people be deprived of its own means of subsistence."*

The right of tribal and indigenous peoples to adequate housing is also recognized, through their right to land, by the ILO Convention 169, Article 16, regarding tribal and indigenous peoples.

### Refugees

The right of refugees to adequate housing is recognized in the 1951 *Convention Relating to the Status of Refugees*. Its Article 21 provides that:

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

### Migrants

The right to adequate housing of the ever growing number of migrants and their families,<sup>26</sup> has been recognized in Article 43, § 1(d), of the 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. According to this Convention:

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

All the above mentioned treaties are legally binding on the states that have ratified them.<sup>27</sup>

## 5. International Declarations

Besides the international human rights treaties, governments have recognized the right to adequate housing and have committed themselves to realizing it in numerous international declarations. In 1976, for example, in the *Vancouver Declaration*, adopted by the United Nations Conference on Human Settlements, the governments declared that:

*"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 programs of self-help and community action. Governments should endeavor to remove all impediments hindering attainments of these goals. Of special importance is the*

<sup>26</sup> According to United Nations figures, there were 191 million migrant persons in 2005 - 115 million in the industrialized countries and 75 million in the countries of the South. U.N. Habitat, *A Safe City is a Just City*. World Habitat Day 2007.

<sup>27</sup> The list of states parties to these international treaties is available on the internet site of the Office of the U.N. High Commissioner for Human Rights: <http://www.ohchr.org/english/law/index.htm>.

<sup>85</sup> From COHRE, *Legal Resources for Housing Rights. International and National Standards*, 2000. [www.cohre.org/store/attachments/COHRE%20Sources%204.pdf](http://www.cohre.org/store/attachments/COHRE%20Sources%204.pdf) et ONU-Habitat, *National Housing Rights Legislation*, 2002, [www.unhabitat.org/downloads/docs/3669\\_2930\\_1.pdf](http://www.unhabitat.org/downloads/docs/3669_2930_1.pdf). Updated, unofficial translations into English, including words and phrases in italics, courtesy of the CETIM.

(Olympics and other sporting competitions, exhibitions, conferences, etc.) 'beautiful city' campaigns, etc. which guarantee protection from eviction or guarantee rehousing based on mutual consent, by any persons living on or near to affected sites."<sup>28</sup> However, few States parties have included the requisite information in their reports to the Committee. The Committee therefore wishes to emphasize the importance it attaches to the receipt of such information.

21. Some States parties have indicated that information of this nature is not available. The Committee recalls that effective monitoring of the right to adequate housing, either by the Government concerned or by the Committee, is not possible in the absence of the collection of appropriate data and would request all States parties to ensure that the necessary data is collected and is reflected in the reports submitted by them under the Covenant.

#### Notes

- i Report of Habitat: United Nations Conference on Human Settlements, Vancouver, 31 May - 11 June 1976 (A/CONF.70/15), chap. II, recommendation B.8, para. C (ii).
- ii Report of the Commission on Human Settlements on the work of its eleventh session, Addendum (A/43/8/Add.1), para. 13.
- iii Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, Vol. I (A/CONF.151/26/Rev.1(vol.I), annex II, Agenda 21, chap. 7.9 (b).
- iv Report of the United Nations Conference on Settlements (Habitat II) (A/CONF.165/14), annex II, The Habitat Agenda, para. 40 (n).
- v Commission on Human Rights resolution 1993/77, para. 1.
- vi E/1990/23, annex III, paras. 6 and 8 (d).
- vii E/C.12/1999/8, annex IV.
- viii Ibid.

*elimination of social and racial segregation, inter alia, through the creation of better balanced communities, which blend different social groups, occupation, housing and amenities." (Section III, § 8)*

While reaffirming the legal status of the right to adequate housing, the heads of state and of government, assembled at Istanbul (Turkey) in 1996, on the occasion of the second United Nations Conference on Human Settlements (Habitat II), adopted a declaration in which they committed themselves, inter alia, to:

*"ensuring adequate shelter for all and making human settlements safer, healthier and more livable, equitable, sustainable and productive," (§ 1)*

And they promised:

*"the full and progressive realization of the right to adequate housing as provided for in international instruments. To that end, we shall seek the active participation of our public, private and non-governmental partners at all levels to ensure legal security of tenure, protection from discrimination and equal access to affordable, adequate housing for all persons and their families," (§ 8)*

Many other international declarations have also denounced the practice of forced evictions. Agenda 21, adopted at the 1992 United Nations Conference on Environment and Development, speaks of:

*"right to adequate housing as a basic human right" declaring that "people should be protected by law against unfair eviction from their homes or land."<sup>28</sup>*

In 1993, the Commission on Human also declared "the practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing."<sup>29</sup>

Non-discrimination against women in access to adequate housing and to land has also been the object of several declarations at the international level. In a resolution on the right to adequate housing and equality of women regarding property, the Commission on Human Rights reaffirmed, in 2005:

*"women's right to an adequate standard of living, including adequate housing, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights"*

and urges Governments:

*"to comply fully with their international and regional obligations and commitments concerning land tenure and the equality of women to own, have access and to control property, land and housing, irrespective of their marital status, and to an adequate standard of living, including adequate housing."<sup>30</sup>*

## B) At the Regional Level

The main regional treaties protecting civil and political human rights - the *European Convention on Human Rights*, the *American Convention on Human Rights* and the *African Charter of Human and Peoples Rights* - all

<sup>28</sup> Agenda 21, Chapters 7, §§ 6 and 9(b): <http://habitat.igc.org/agenda21/a21-07.htm>

<sup>29</sup> V. Resolution 1993/77, § 1, of the Commission on Human Rights (10 March 1993).

<sup>30</sup> V. Resolution 2005/25, § 2, of the Commission on Human Rights (15 April 2005).

recognize the right to life, the right not to be subjected to cruel, inhuman or degrading punishment and the right not to be subjected to arbitrary or illegal interference in one's private or family life or in one's home. These civil and political rights guarantee a partial protection of the right to adequate housing.

Some regional treaties also recognize the right to adequate housing per se: the *European Social Charter*, the *African Charter of the Rights and Well Being of the Child* and the *Protocol of the African Charter of Human and Peoples' Rights on the Rights of Women in Africa*.

## 1. Europe

### The European Social Charter (1961, revised 1996)

The European Social Charter, revised in 1996, explicitly protects the right to adequate housing. Article 31 provides that:

*"With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: 1. to promote access to housing of an adequate standard; 2. to prevent and reduce homelessness with a view to its gradual elimination; 3. to make the price of housing accessible to those without adequate resources."*

The European Social Charter (revised) is currently binding for the 24 states that have ratified it.<sup>31</sup>

## 2. Africa

### The African Charter of Human and Peoples' Rights (1990)

The African Charter of Human and Peoples Rights does not explicitly recognize the right to adequate housing, but several other recognized rights, such as the right to health (Article 16) and the right of peoples to a general satisfactory environment favorable to their development (Article 24), can be interpreted as protecting the right to adequate housing. The African Charter of Human and Peoples Rights also provides that African states should realize the right to adequate housing that they have recognized at the international level, including by accepting the International Covenant on Economic, Social and Cultural Rights (Article 60 of the African Charter). Thus, all those states that have accepted the African Charter and the International Covenant on Economic, Social and Cultural Rights are under obligation to take measures to realize the right of their people to adequate housing.

The African Charter of Human and Peoples Rights has been ratified by 53 member states of the African Union.<sup>32</sup>

<sup>31</sup> Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy, Lithuania, Malta, Moldavia, Netherlands, Norway, Portugal, Rumania, Slovenia, Sweden, Turkey and Ukraine: <http://conventions.coe.int/Treaty/Commun/CherchSig.asp?NT=163&CM=1&DF=10/5/2007&CL=ENG>

<sup>32</sup> Names of states parties to the African Charter of Human and Peoples Rights are available on the Africa Union site: <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20Human%20and%20Peoples%20Rights.pdf>

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

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

17. The Committee is aware that various development projects financed by international agencies within the territories of State parties have resulted in forced evictions. In this regard, the Committee recalls its *General Comment No. 2* (1990) which states, inter alia, that "international agencies should scrupulously avoid involvement in projects which, for example... promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account."<sup>33</sup>

18. Some institutions, such as the World Bank and the Organisation for Economic Cooperation and Development (OECD) have adopted guidelines on relocation and/or resettlement with a view to limiting the scale of and human suffering associated with forced evictions. Such practices often accompany large-scale development projects, such as dam-building and other major energy projects. Full respect for such guidelines, insofar as they reflect the obligations contained in the Covenant, is essential on the part of both the agencies themselves and States parties to the Covenant. The Committee recalls in this respect the statement in the *Vienna Declaration and Programme of Action* to the effect that "while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights" (Part I, para. 10).

19. In accordance with the guidelines for reporting adopted by the Committee, State parties are requested to provide various types of information pertaining directly to the practice of forced evictions. This includes information relating to (a) the "number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction", (b) "legislation concerning the rights of tenants to security of tenure, to protection from eviction" and (c) "legislation prohibiting any form of eviction."<sup>34</sup>

20. Information is also sought as to "measures taken during, inter alia, urban renewal programmes, redevelopment projects, site upgrading, preparation for international events

may be carried out. The legislation must also apply to all agents acting under the authority of the State or who are accountable to it. Moreover, in view of the increasing trend in some States towards the Government greatly reducing its responsibilities in the housing sector, States parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies. States parties should therefore review relevant legislation and policies to ensure that they are compatible with the obligations arising from the right to adequate housing and repeal or amend any legislation or policies that are inconsistent with the requirements of the Covenant.

10. Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

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

12. Forced eviction and house demolition as a punitive measure are also inconsistent with the norms of the Covenant. Likewise, the Committee takes note of the obligations enshrined in the *Geneva Conventions of 1949* and *Protocols thereto of 1977* concerning prohibitions on the displacement of the civilian population and the destruction of private property as these relate to the practice of forced eviction.

13. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the *International Covenant on Civil and Political Rights*, which requires States parties to ensure “an effective remedy” for persons whose rights have been violated and the obligation upon the “competent authorities (to) enforce such remedies when granted”.

14. In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. In this regard it is especially pertinent to recall *General Comment No. 16* of the Human Rights Committee, relating to article 17 of the International Covenant on Civil and Political Rights, which states that interference with a person's home can only take place “in cases envisaged by the law”. The Committee observed that the law “should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances”. The Committee also indicated that “relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted”.

### **The African Charter of the Rights and Well Being of the Child (1990)**

The African Charter of the Rights and Well Being of the Child is more explicit. The states that have accepted it commit themselves to taking all appropriate measures, according to their means, to assist parents and other person responsible for the child, and to provide, in case of need, programs of material assistance and support, in particular regarding housing (Article 20).

Observance of the African Charter of the Rights and Well Being of the Child is currently compulsory for the 41 states of the African Union that have ratified it.<sup>33</sup>

### **The Protocol of the African Charter of Human and Peoples' Rights on the Rights of Women in Africa (2003)**

The Protocol of the African Charter of Human and Peoples' Rights on the Rights of Women in Africa is also explicit. Article 16 provides that:

*“Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing.”*

Article 21, § 1, protects the right to inheritance in these terms:

*“A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.”*

The implementation of the Protocol of the African Charter of Human and Peoples' Rights on the Rights of Women in Africa is currently binding for the 21 states of the African Union that have ratified it.<sup>34</sup>

## **3. The Americas**

### **The Protocol of San Salvador (1988)**

The Protocol of San Salvador was drafted to complement the 1969 American Convention on Human Rights. However, the protection it accords to the right to adequate housing is limited. This right is protected in the Americas only through the recognition of the right of all persons to live in a healthy environment and to benefit from basic public services. (Article 11).

The Protocol of San Salvador is binding on the 14 states that have ratified it.<sup>35</sup>

In Asia, there is no particular regional text for the protection of human rights.

<sup>33</sup> Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Côte d'Ivoire, Comoros, Congo, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Kenya, Libya, Lesotho, Madagascar, Mali, Malawi, Mozambique, Mauritania, Mauritius, Namibia, Nigeria, Niger, Rwanda, South Africa, Senegal, Seychelles, Sierra Leone, Tanzania, Togo, Uganda, Zimbabwe: <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>

<sup>34</sup> Benin, Burkina Faso, Cape Verde, Comoros, Djibouti, Gambia, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Namibia, Nigeria, Rwanda, Senegal, Seychelles, South Africa, Tanzania, Togo and Zambia: <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>

<sup>35</sup> Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Suriname and Uruguay.

### III. GOVERNMENTS' OBLIGATIONS AND IMPLEMENTATION AT THE NATIONAL LEVEL

#### A) Governments' Obligations

As a human right, the right to adequate housing is not a political option that governments can choose to adopt or not. Its recognition implies legal obligations for governments.

The countries that have ratified the International Covenant on Economic, Social and Cultural Rights or a regional convention that explicitly deals with the right to adequate housing (e.g. the European Social Charter) are under obligation to incorporate it into their national legislation, unless international treaties automatically become national legislation upon ratification.

As is the case with all other human rights, governments must respect and enforce respect for, as well as protect and implement, the right to adequate housing. They must also cooperate with each other to provide international assistance for those countries that encounter difficulty in honoring their commitments.

#### 1. *The Obligation to Recognize the Right to Adequate Housing at the National Level*

The foremost duty of governments is to incorporate the right to adequate housing into their national legislation. Without this, it is mostly impossible - again, depending upon the legal system of the country in question - to credibly protect the population's right to housing.

In 2002, the United Nations Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, emphasized that:

*"Globally, more than 50 countries have adopted or amended national constitutions to include elements that address the right to adequate housing, many of which contain explicit guarantees to the right to adequate housing."<sup>36</sup>*

Nonetheless, in practice, it is not always possible to cite the right to adequate housing before a national court. In fact, states have diverse means for recognizing the right to adequate housing at the national level.

First, several countries, in their constitutions, have recognized the right to adequate housing as a basic human right.<sup>37</sup> Ideally, each person victim of a viola-

carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.

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

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

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

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

8. In essence, the obligations of States parties to the Covenant in relation to forced evictions are based on article 11.1, read in conjunction with other relevant provisions. In particular, article 2.1 obliges States to use "all appropriate means" to promote the right to adequate housing. However, in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions (as defined in paragraph 3 above). Moreover, this approach is reinforced by article 17.1 of the International Covenant on Civil and Political Rights which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against "arbitrary or unlawful interference" with one's home. It is to be noted that the State's obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

9. Article 2.1 of the Covenant requires States parties to use "all appropriate means", including the adoption of legislative measures, to promote all the rights protected under the Covenant. Although the Committee has indicated in its General Comment No. 3 (1990) that such measures may not be indispensable in relation to all rights, it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions

<sup>36</sup> Report to the 58<sup>th</sup> Commission on Human Rights, E/CN.4/2002/59, § 2, 1 March 2002.

<sup>37</sup> Armenia, Belgium, Burkina Faso, Congo, Ecuador, Equatorial Guinea, Guyana, Haiti, Honduras, Mali, Mexico, Nicaragua, Paraguay, Russia, Sao Tome & Principe, Seychelles, South Africa, Spain and Venezuela (v. Annex 3).

## General Comment No. 7 on the Right to Adequate Housing: Forced Evictions<sup>84</sup>

Adopted on 20 May 1997 by the Committee on Economic, Social and Cultural Rights

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

2. The international community has long recognized that the issue of forced evictions is a serious one. In 1976, the *United Nations Conference on Human Settlements* noted that special attention should be paid to “undertaking major clearance operations should take place only when conservation and rehabilitation are not feasible and relocation measures are made”<sup>38</sup>. In 1988, in the *Global Strategy for Shelter to the Year 2000*, adopted by the General Assembly in its resolution 43/181, the “fundamental obligation [of Governments] to protect and improve houses and neighbourhoods, rather than damage or destroy them” was recognized.<sup>39</sup> *Agenda 21* stated that “people should be protected by law against unfair eviction from their homes or land”<sup>40</sup>. In the *Habitat Agenda* Governments committed themselves to “protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided”<sup>41</sup>. The Commission on Human Rights has also indicated that “forced evictions are a gross violation of human rights”. However, although these statements are important, they leave open one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible and of spelling out the types of protection required to ensure respect for the relevant provisions of the Covenant.

3. The use of the term “forced evictions” is, in some respects, problematic. This expression seeks to convey a sense of arbitrariness and of illegality. To many observers, however, the reference to “forced evictions” is a tautology, while others have criticized the expression “illegal evictions” on the ground that it assumes that the relevant law provides adequate protection of the right to housing and conforms with the Covenant, which is by no means always the case. Similarly, it has been suggested that the term “unfair evictions” is even more subjective by virtue of its failure to refer to any legal framework at all. The international community, especially in the context of the Commission on Human Rights, has opted to refer to “forced evictions”, primarily since all suggested alternatives also suffer from many such defects. The term “forced evictions” as used throughout this general comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions

tion of the right to adequate housing can have access to a court of law to claim his right (v. Illustration 4, the Grootboom Affair).

Second, recognition in the constitution of the right to adequate housing as a principle, a goal or a social or political goal that is essential to the country, obtains in numerous countries.<sup>38</sup> In these countries, the government has the political duty, through its policies and programs, to improve access to housing by the population, including and especially by the poorest. But, in case of violations of the right to housing, going to court can be more difficult, depending on the legal system in the country in question. Nonetheless, most of these countries have ratified the International Covenant on Economic, Social and Cultural Rights. Thus, they are committed to incorporating the right to adequate housing into their national legislation, thus allowing their people to claim this right in the national courts. Norway has done this, along with 77 other countries, but not all the other states parties to the International Covenant (currently 156) have done so.

Third, there is the recognition of the right to adequate housing as an integral part of other fundamental rights guaranteed by the constitution, such as the right to life or the right to a minimum standard of living. In most countries, the right to life is recognized in the constitution as a basic right. It is then possible for the appropriate instances to construe this right as including the right to adequate housing. This is the case, for example, in India and Bangladesh, where the right to life has been broadly by the Supreme Court. For the Indian Supreme Court, the right to life includes, in particular, the protection of the right to life, the right to health, the right to adequate housing, the right to food and the right to the environment.<sup>39</sup>

Fourth, there is recognition of the right to adequate housing in regional or international texts that sanction this right, such as the International Covenant on Economic, Social and Cultural Rights or the European Social Charter. In many countries this is the case. For example, at least 77 countries have made one or the other an integral part of national legislation.<sup>40</sup> However, the absence of training

<sup>38</sup> Argentina, Bahrain, Bangladesh, Colombia, Costa Rica, Dominican Republic, Finland, Greece, Guatemala, India, Iran, Italy, Nepal, Netherlands, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Slovenia, Sri Lanka, Suriname, Switzerland and Turkey. (v. Annex 3).

<sup>39</sup> V. the case study of the FAO on the right to food in India. FAO, *Case study on the right to food: India*, FAO document IGWG RTFG /INF 4/APP.5: <http://www.fao.org/righttofood/kc/downloadsv1/docs/AH200.pdf>

<sup>40</sup> These countries are: Albania, Algeria, Angola, Armenia, Austria, Azerbaijan, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Democratic Republic of the Congo, Czech Republic, Djibouti, Egypt, El Salvador, Ecuador, Estonia, Ethiopia, Finland, Former Yugoslav Republic of Macedonia, France, Gabon, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Honduras, Kirghizstan, Latvia, Lithuania, Madagascar, Malawi, Mali, Mongolia, Namibia, Netherlands, Nicaragua, Niger, Norway, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russia, Rwanda, Senegal, Serbia, Montenegro, Seychelles, Slovakia, Slovenia, Spain, Sri Lanka, Switzerland, Suriname, Tajikistan, Timor-Leste, Togo, Turkey, Ukraine and Venezuela. FAO, Right to Food at the

<sup>84</sup> V. [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)95971e476284596802564c3005d8d50?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)95971e476284596802564c3005d8d50?OpenDocument)

for judges and lawyers in international human rights law complicates the implementation of the International Covenant in some countries where international conventions are directly applicable at the national level without enabling legislation (e.g. Switzerland).

Fifth, the right to adequate housing can be recognized by ordinary legislation, for example in a national law on housing (v. Chapter III, B).

### Illustration n°3

#### **Exemplary Recognition of the Right to Adequate Housing on the National Level**

##### **South Africa**

The best example of the recognition of the right to adequate housing as a fundamental right is to be found in the constitution of South Africa, which provides that:

1. *Everyone has the right to have access to adequate housing.*
2. *The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.*
3. *No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions. (Section 26)*

and that:

1. *Every child has the right... c. to shelter;" (Section 28).*

The South African constitution (in Sections 7 and 8) also provides that the government has the obligation to respect, to protect and to realize the right to adequate housing, which applies to the executive, legislative and judicial branches and to all levels of government (local, provincial and national).

##### **Argentina**

Argentina recognizes the international and regional treaties in an exemplary manner in its national law. Article 75 of the Argentine constitution provides that:

*"The American Declaration of Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and its Optional Protocol; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the elimination of All Forms of Discrimination Against Women; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment; the Convention on the Rights of the Child; according to the conditions of their entry into force, these [international instruments] are at the same level as the Constitution... and should be considered as complementary to the rights recognized by the Constitution."*

adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and views of the affected groups.

##### **Notes**

- i *Official Records of the General Assembly, Forty-third Session, Supplement No. 8, addendum (A/43/8/Add.1).*
- ii Commission on Human Rights resolutions 1986/36 and 1987/22; reports by Mr. Danilo Türk, Special Rapporteur of the Sub-Commission (E/CN.4/Sub.2/1990/19, paras. 108-120; E/CN.4/Sub.2/1991/17, paras. 137-139); see also Sub-Commission resolution 1991/26.
- iii See, for example, article 25 (1) of the Universal Declaration on Human Rights, article 5 (e) (ii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, article 27 (3) of the Convention on the Rights of the Child, article 10 of the Declaration on Social Progress and Development, section III (8) of the Vancouver Declaration on Human Settlements, 1976 [*Report of Habitat: United Nations Conference on Human Settlements* (United Nations publication, Sales No. E.76.IV.7 and corrigendum), chap. I], article 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No. 115).
- iv See footnote 1.
- v Geneva, World Health Organization, 1990.

homelessness and inadequate housing within its jurisdiction. In this regard, the revised general guidelines regarding the form and contents of reports adopted by the Committee (E/C.12/1991/1) emphasize the need to “provide detailed information about those groups within... society that are vulnerable and disadvantaged with regard to housing”. They include, in particular, homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in “illegal” settlements, those subject to forced evictions and low-income groups.

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

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

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

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

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

19. Finally, article 11 (1) concludes with the obligation of States parties to recognize “the essential importance of international cooperation based on free consent”. Traditionally, less than 5 per cent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being

Article 14, which refers to the right to adequate housing, stipulates that:

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

## **Brazil**

The Brazilian constitution ranks among the best regarding the right to adequate housing. Following are the pertinent articles.

### **Article 7(IV)**

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

### **Article 23(IX)**

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

### **Article 183**

Those who are squatters in an urban area of up to 250,000 (m<sup>2</sup>), for a continuous period of at least five (5) years, without claim for housing, will be able to have its domain unless he/she has another urban or rural property.

### **Article 187 (VIII)**

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

### **Article 203 (II)**

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

## **Translations:**

The CETIM for Argentina and Brazil.

## 2. *The Obligation to Respect the Right to Adequate Housing*

The obligation to *respect* the right to adequate housing implies that governments must refrain from any measure that would impede the exercise of this right. This is a negative commitment, against government action as it were, prohibiting the government from doing anything that would compromise already acquired access to housing. A government violates this obligation, for example, when it decides to forcibly evict persons from their housing - whatever their legal status - with no advance notice nor available means of appeal. It also violates this obligation if it restrains the right of association of tenants and rural communities owning housing in common.

During an armed conflict, this obligation means that government troops must refrain from destroying civilian housing; nor may they block rescue operations designed to provide refuge to displaced persons or refugees.

As in the case of other human rights, governments not only have the duty to respect the right to adequate housing but must also enforce respect of this right as defined in the International Covenant on Economic, Social and Cultural Rights.

## 3. *The Obligation to Protect the Right to Adequate Housing*

The obligation to *protect* the right to adequate housing requires that governments prohibit third parties from preventing the enjoyment of the right to housing in any way. This applies to individuals, business enterprises and other entities. Governments must, for example, enact laws that protect the population from land and property speculation. They must create competent bodies to investigate violations and must assure the means of effective redress for victims, most notably through access to the courts. Governments must also intervene when powerful individuals or business enterprises evict persons from their land or their housing, by bringing to law those responsible and by guaranteeing restitution and/or compensation for the victims.

The Special Rapporteur on the Right to Adequate Housing, in several of his reports, has denounced the negative effects of the privatization of public services.<sup>41</sup> He emphasizes that the government has the duty to guarantee, for example, that privatization of water will not have negative effects on access to water and to adequate housing for the population. Such privatization has very often entailed price increases that have made water unaffordable for the poorest. In Manila, for example, the price of water quadrupled between 1997 and 2003 after the privatization carried out by *Lyomaise des Eaux*.<sup>42</sup> In all cases of privatization of public services, including water or electricity, the government must continue to guarantee the protection of the right to adequate housing, including/especially for the poorest.

<sup>41</sup> V. E/CN.4/2002/59 and E/CN.4/2006/118.

<sup>42</sup> V. E/CN.4/2004/10, § 40.

of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights - such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making - is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.

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

11. States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment No. 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

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

13. Effective monitoring of the situation with respect to housing is another obligation of immediate effect. For a State party to satisfy its obligations under article 11 (1) it must demonstrate, *inter alia*, that it has taken whatever steps are necessary, either alone or on the basis of international cooperation, to ascertain the full extent of

lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

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

(d) **Habitability.** Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the *Health Principles of Housing*<sup>9</sup> prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

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

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

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

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept

The government is also responsible for intervening to avoid all discrimination in access to housing. A government that does not, for example, guarantee that no person shall be refused housing because of his/her sex, nationality or origin, nor prevent other forms of discrimination, violates its duty to protect the right to housing.

#### **4. The Obligation to Implement (Facilitate and Realize) the Right to Adequate Housing**

The obligation to **implement** comprises the obligation to **facilitate** and the obligation to realize the right to adequate housing. The obligation to **facilitate** requires the government to take positive measures to help individuals and communities exercise their right to housing. The government must, for example, construct low-cost housing in sufficient quantities and guarantee that the poorest have access to it through subsidies.

The obligation to **realize** means that the government will guarantee temporary housing to all those in a situation of extreme precariousness. In cases of armed conflict or natural disasters, special attention must be given to women, children, the elderly, the internally displaced and refugees.

The obligation to **implement** requires governments to adopt necessary legislative measures, to design a strategy and an action plan for housing at the national level and to guarantee that housing is adequate, available and accessible to everybody, including in rural areas and the most vulnerable urban areas.

A country in which a large number of persons are deprived of access to minimum housing, or at least temporary shelter, violates, *prima facie*, its duty to realize the right to adequate housing. The poorest countries, if they are without sufficient resources to respect this minimal obligation, should appeal to international cooperation as a remedy.

#### **5. The Obligations of International Cooperation and Assistance**

If the poorest countries have the obligation to appeal to international cooperation in order to realize the right to adequate housing, rich countries have the obligation to respond. They have committed themselves to this by ratifying the International Covenant on Economic, Social and Cultural Rights, which provides for governments to act, both through their own efforts and through international cooperation and assistance, to the full extent of available resources, in order to realize the right to adequate housing.<sup>43</sup>

In its General Comment 4, the Committee on Economic, Social and Cultural Rights has described the international dimension of the duties of states parties in these terms:

*“Traditionally, less than 5 per cent of all international assistance has been directed towards housing or human settlements, and often the manner by which such funding is provided does little to address the housing needs of*

<sup>43</sup> International Covenant on Economic, Social and Cultural Rights, Article 2 § 1.

*disadvantaged groups. States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed. International financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing. States parties should, when contemplating international financial cooperation, seek to indicate areas relevant to the right to adequate housing where external financing would have the most effect. Such requests should take full account of the needs and view of the affected groups.*<sup>44</sup>

## **B) Examples of Implementation of the Right to Adequate Housing at the National Level**

Most countries have adopted laws, established policies and created programs to improve access to housing for their populations. But only some of them have done this for the explicit purpose of realizing the right to adequate housing of their population. According to a study by UN-Habitat, 48 countries have adopted national legislation recognizing at least partially the right to adequate housing as well as the responsibility of the government to guarantee adequate housing to the entire population.<sup>45</sup> In this chapter, we shall examine the examples of Scotland, France and Venezuela, all of which have particularly advanced legislation.

### **1. Scotland**

The United Kingdom adopted a housing law in 1977 - the *Housing Act* - which applies to Scotland. This law obliges municipal authorities to loge the homeless who have a link with the municipality and who find themselves homeless independent of their own will. Wanting to expand on this, Scotland adopted its own housing law in 1987 and its own law on homelessness in 2001. The criterion of a link with the community was abandoned in the 2001 law, which obliges the municipalities to assist any person legally in the country who is in need.

The Scottish legislation was considerably improved in 2003,<sup>46</sup> when the Scottish parliament adopted the law on the inadequately housed or homeless and set out to program the eradication poor housing by 2012.<sup>47</sup> Every person considered having priority needs, as for example a woman alone with two children, can demand adequate housing of the authorities and shall have access to court if the demand is not satisfied. The law provides that this right to have

<sup>44</sup> General Comment No. 4, § 19, v. Annex 1.

<sup>45</sup> V. Annex 3 and UN-Habitat, *National Housing Rights Legislation*, 2002:

[www.unhabitat.org/downloads/docs/3669\\_2930\\_1.pdf](http://www.unhabitat.org/downloads/docs/3669_2930_1.pdf)

<sup>46</sup> Laure Meunier, "Logement: la voie écossaise?" in *Alternatives économiques*, N° 248, June 2006.

<sup>47</sup> *Homelessness etc. (Scotland) Act 2003*:

<http://www.opsi.gov.uk/legislation/scotland/acts2003/20030010.htm>

concerned. This General Comment thus aims to identify some of the principal issues which the Committee considers to be important in relation to this right.

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

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

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

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

(b) *Availability of services, materials, facilities and infrastructure.* An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and

## IV. Annexes

### Annex 1

#### General Comment No. 4 on the Right to Adequate Housing<sup>83</sup>

Adopted on 13 December 1991 by the Committee on Economic, Social and Cultural Rights

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

2. The Committee has been able to accumulate a large amount of information pertaining to this right. Since 1979, the Committee and its predecessors have examined 75 reports dealing with the right to adequate housing. The Committee has also devoted a day of general discussion to the issue at each of its third (see E/1989/22, para. 312) and fourth sessions (E/1990/23, paras. 281-285). In addition, the Committee has taken careful note of information generated by the International Year of Shelter for the Homeless (1987) including the Global Strategy for Shelter to the Year 2000 adopted by the General Assembly in its resolution 42/191 of 11 December 1987.<sup>1</sup> The Committee has also reviewed relevant reports and other documentation of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.<sup>2</sup>

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

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

5. In some instances, the reports of States parties examined by the Committee have acknowledged and described difficulties in ensuring the right to adequate housing. For the most part, however, the information provided has been insufficient to enable the Committee to obtain an adequate picture of the situation prevailing in the State

<sup>83</sup> V. www.unhcr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument

adequate housing shall be extended to the entire population living in Scotland as of 31 December 2012.

With a view to 2013, statistical tools have been developed, and indicators allowing the measurement of progress accomplished are being used by the government and by civil society, which is monitoring the implementation of the law.

### 2. France

The right to adequate housing was first recognized in France in the 1990 law on the right to adequate housing. This law, in its first article, stipulates that "guaranteeing shelter constitutes a duty of solidarity for the entire nation". A law against forced evictions adopted in 1998 also incorporated the right to adequate housing as a fundamental right, and the Constitutional Council, the highest French court, has recognized that the right to adequate housing is a goal having constitutional status.

This legal protection is highly developed. However, it has been deplored by many as incomplete, notably because it does not allow for any redress before the courts in case of non-respect of this right. Its concrete implementation is also problematic for the situation progressively deteriorated from 1990 to 2006. In 2006, the Abbé Pierre Foundation denounced the inaction of the government in the face of a catastrophic situation: increasing numbers of forced evictions, three million persons inadequately housed, and nearly 900,000 housing units lacking relative to overall needs.<sup>48</sup>

Given this situation, France conducted a national debate in 2007 on the necessity of recognizing, in a new law, a legal right to adequate housing that can stand up in court. The debate was useful, and a new law on the legal right to housing was passed in March 2007.<sup>49</sup> This new law is very progressive – in appearance, at least. It recognizes the right to decent, independent housing to all persons residing legally on French territory who are not able to obtain such by their own means. It provides for access to the courts for victims in cases of violation of the law and creates an oversight committee to monitor the implementation of this right. As in the Scottish case, it provides for phases allowing a first priority category of the population (those with the most pressing needs) to be able to go to court in case of violation of the right to housing as of 1 December 2008, after which a second category of persons will be able to do so starting January 2012.

In spite of its promise, the new law has been vehemently criticized by civil society and in academic circles. In the first place, according to the NGOs, it protects only those persons legally resident in France, whereas significant

<sup>48</sup> Bertrand Bissuel, "Droit au logement: un mirage pour les pauvres?", *Le Monde*, 31 August 2006, and Laure Meunier, "Logement: la voie écossaise?" in *Alternatives économiques*, N° 248, June 2006.

<sup>49</sup> V. <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=SOCX0600231L>

numbers of the homeless are persons without formal residency status (called the “sans-papiers”). The NGOs also criticize the government for its inaction during the months that followed the passage of the law, whereas implementation requires rapid concrete measures.

Finally, the most radical criticism came from constitutional law experts, who have denounced a law so complicated that it is meaningless. For Professor Frédéric Rolin:

*“There are so many problems in the text that to speak of a ‘right enforceable by the courts’ in the sense of a ‘right existing in practice’ to adequate housing is a veritable illusion.”*<sup>50</sup>

The next few years will thus be decisive for the 2007 law, demonstrating whether or not it will indeed produce an improvement in the situation of the homeless of France.

Whatever the criticism, however, the situation in France, where the right to adequate housing is legally enshrined in legislation - presumably - enforceable by the courts, contrasts starkly with what is happening in other European countries, where legislation and court decisions are taking a clearly regressive direction. Croatia, for example, adopted progressive laws in the past, before a new law, in 1996, and a decision of the Constitutional Court in 1998 deprived thousands of persons of their right to adequate housing. In spite of the mobilization of the Croatian Alliance of Tenants Associations, founded to protect this right, 40,000 persons in Croatia are currently threatened with forced evictions owing to this regressive 1990s legislation and jurisprudence.<sup>51</sup>

### 3. Venezuela

The Bolivarian Republic of Venezuela recognized the right to adequate housing in its 1999 constitution:

*“Every person has the right to adequate, safe and comfortable, hygienic housing, with appropriate essential basic services, including a habitat such as to humanize family, neighborhood and community relations. The progressive meeting of this requirement is the shared responsibility of citizens and the State in all areas. The State shall give priority to families, and shall guarantee them, especially those with meager resources, the possibility of access to social policies and credit for the construction, purchase or enlargement of dwellings.”*<sup>52</sup>

In 2001, the Venezuelan parliament then passed a “**Lands and Agrarian Development Law**”<sup>53</sup> imposing an equitable redistribution of land and wealth as well as strategic and progressive planning for the benefit of future generations. The declared purpose of this law is to undo the latifundia régime, considered contrary to national interest and social justice.

## CONCLUSION

The right to adequate housing is a fundamental human right, recognized in numerous texts on both the international and regional level as well as in several constitutions or national legislative bills. However, it is often violated: hundreds of thousand of persons are arbitrarily and forcibly evicted each year, and 100 million persons are living in the world without the shelter needed to protect themselves and live in dignity.

A better knowledge of the right to adequate housing and the concomitant obligations of governments is a necessary condition for its concrete realization. But this knowledge is far from enough. It is essential that social movements, community groups and NGOs defending the homeless, the inadequately housed and the evicted make the implementation of this right their resolute cause, recurring to the protection mechanisms at the national, regional and international level to support their struggle. Some 70,000 persons were protected from evictions in the Dominican Republic in 1990, after use was made of international mechanisms by the local NGOs. But this has not been sufficient for the protection of some 4 million persons who were forcibly evicted from their homes between 2003 and 2006. Only daily local struggle, touching all possible levels of the fight for the right to adequate housing, can have an effect, as is demonstrated in the case of South Africa, a country that, nonetheless, has exemplary legislation.

<sup>50</sup> V. [http://frederic-rolin.blogspot.com/droit\\_au\\_logement](http://frederic-rolin.blogspot.com/droit_au_logement)

<sup>51</sup> V. <http://www.habitants.org/article/articleview/1613/1/451>

<sup>52</sup> V. Article 82: [http://www.embavenez-us.org/constitution/title\\_III.htm](http://www.embavenez-us.org/constitution/title_III.htm)

<sup>53</sup> “Ley de Vivienda y Habitat”, see [www.msinfo.info/](http://www.msinfo.info/)

The *Committee for the Elimination of Racial Discrimination*, for example, has often brought up the matter of housing as one of the areas where governments act in a discriminating manner, or fail to protect their people from discriminatory acts by a third party. Discrimination against indigenous peoples is a typical subject that has been dealt with by the Committee in several of its concluding observations to governments of Latin American, Australia, New Zealand, Sudan and the Philippines.<sup>79</sup> This committee has also concluded that there had been violations of the right to adequate housing in several individual complaints, including one case in the Netherlands where the arrival of a foreigner in an apartment in the city of Utrecht provoked violent xenophobic reactions on the part of inhabitants of the neighborhood, without any protective measure being taken by the authorities.<sup>80</sup>

The *Committee Against Torture* has also protected the enjoyment of the right to adequate housing in its work with states parties, in several cases identifying forced evictions with cruel, inhuman and degrading treatment. In its concluding observations to the state of Israel in 2001, the Committee concluded that the policy of house demolition in the Occupied Palestinian Territories represented in many cases a punishment or cruel, inhuman and degrading punishment.<sup>81</sup>

Several times, forced evictions have also been identified with cruel, inhuman and degrading treatment in cases of individual complaint examined by the Committee. In the case of forced evictions and the destruction of several houses of Roma families in Montenegro, houses burned down by hundreds of demonstrators before the eyes of the police, who failed to intervene, the government of Serbia and Montenegro was found guilty of not having protected the attacked families.<sup>82</sup>

The *Committee on the Elimination of Discrimination Against Women*, the *Committee on the Rights of the Child*, the *Human Rights Committee* and the *Committee on Migrant Workers* have also intervened on occasion in the matter of housing (for example, to protect male-female equality in access to housing or the rights of women to inherit) but they have done so in a less systematic manner than the expert U.N. committees. Their work in protecting the right to housing, potentially very important, has yet to fulfill that potential.

A year later, in 2002, the government set up Urban Land Committees or CTUs<sup>54</sup> entrusted with facilitating settling land claims in urban settings.<sup>55</sup> These settlements have two elements:

- legal settlement of questions of access to property and land in urban settings, in particular as this involves the poorest in the poor neighborhoods;
- physical improvements of living conditions in neighborhoods guaranteeing services and infrastructure for health, education, and food.

Parallel to this process, the government set up a Ministry of Housing and Human Environment (2004), financed from the income from the national oil company (US\$ 200 million for housing in 2004), with, as a goal, the coordination of government activities in order to guarantee suitable housing for all inhabitants.<sup>56</sup>

The various measures adopted by the Bolivarian Republic of Venezuela are now bearing fruit. Over the past several years, 373 landed properties covering more than a million and a half hectares have been divided up among 15,000 families, and more than 6,000 CTUs have been set up in the main cities and towns of the country, granting property title-deeds to nearly 300,000 families.<sup>57</sup>

<sup>79</sup> V. E/CN.4/2004/48: [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2004.48.En](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2004.48.En)

<sup>80</sup> Committee for the Elimination of Racial Discrimination, Communication N°: 4/1991, CERD/C/42/D/4/1991: <http://www1.umn.edu/humanrts/country/decisions/CERD-DLR.htm>

<sup>81</sup> V. CAT/C/XXVII/Concl.5.

<sup>82</sup> Committee Against Torture, *Hajrići Džemajl et others v. Serbia-Montenegro*, Communication N°: 161/2000, CAT/C/29/D/161/2000: <http://www1.umn.edu/humanrts/cat/decisions/161-2000.html>

<sup>54</sup> Comités de Tierra Urbana.

<sup>55</sup> *Democratización de la ciudad y transformación urbana*, Ministerio del Poder Popular para la Vivienda y Habitat: [www.mhv.gov.ve/habitat/pag/enlaces.php](http://www.mhv.gov.ve/habitat/pag/enlaces.php)

<sup>56</sup> [www.gobiernoenlinea.gov.ve/miscelaneas/mission\\_habitat.html](http://www.gobiernoenlinea.gov.ve/miscelaneas/mission_habitat.html)

<sup>57</sup> [www.msinfo.info/](http://www.msinfo.info/)

## IV. MONITORING MECHANISMS AT THE NATIONAL, REGIONAL AND INTERNATIONAL LEVELS

If a country fails to carry out one of its obligations to respect, to protect or to implement the right to adequate housing, all persons who are victims of such a failure should be able to have access to an instance of judicial or extra-judicial redress in order to be able to claim their rights. All victims of violations of the right to adequate housing have a right to restitution and/or adequate compensation - including the guarantee of no further violations.

A person or group of persons arbitrarily evicted from housing or from land that provided housing, a person or group of persons left without means of access to adequate housing through his/her/their own means and without local, national or international help, must be able to lodge a complaint for violation of the right to adequate housing and to obtain redress.

In point of fact, the means of claiming one's right to adequate housing and the chances of obtaining compensation/restitution depend largely on the information and redress mechanisms available at the national, regional and international levels.

At the national level, as at the regional and international levels, there are two types of redress mechanisms that can be used: judicial instances (for example, a national court whose judge can hand down decisions binding on government officials) and extra-judicial instances (for example, a national human rights commission) or quasi-judicial instances (for example, the treaty oversight committees of the U.N. that can draft recommendations or negotiate compensation with government officials). This chapter will discuss the two types of control mechanisms available at the national, regional and international levels.

### A) At the National Level

#### 1. Judicial Redress<sup>58</sup>

In countries where the right to adequate housing is recognized as a basic constitutional right, or as an element of another basic right recognized in the constitution (for example the right to life - v. Chapter I), it is, theoretically possible to claim that right before an administrative instance or a court at the local or national level.

<sup>58</sup> Regarding this part, see also, UN-Habitat and OHCHR, *Housing rights legislation: review of international and national legal instruments*, 2002, pp. 92-97: <http://huachen.org/english/about/publications/docs/houing.pdf>

## 2. The Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights was created in 1985 and comprises 18 independent experts who meet twice a year in Geneva for three-week periods.

All countries that have ratified the International Covenant on Economic, Social and Cultural Rights are required to submit a report two years after ratification, and every five years subsequently, on measure taken to realize the rights recognized in the Covenant, including the right to adequate housing. Upon submission of the report and examination of it by the Committee members, the country is invited to send a delegation to Geneva to discuss the report with the Committee, which questions the country delegation and addresses to it its final observations.<sup>77</sup>

During the whole process, from the submission of the report to the final observations, the role of civil society organizations is crucial. These organizations can submit parallel reports, they can attend the discussions between the country delegation and the Committee members and they can monitor the implementation of the final observations at the national level, putting pressure on their governments, which are often not otherwise "motivated" to take the recommendations seriously. In this way, they can contribute to concrete improvements in the lives of the disadvantaged populations of their countries.

One of the most effective examples of the protection of the right to adequate housing by the Committee occurred when it intervened to oppose the forced evictions taking place in the Dominican Republic in the early 1990s. Some 15,000 persons had already been forcibly evicted by the government in anticipation of the festivities surrounding the 500th anniversary of the arrival of Christopher Columbus in the Americas. In response to an NGO, the Committee drafted a report on this matter, then examined the report of the government and the parallel report of the NGOs in Geneva before presenting its concluding observations to the government.<sup>78</sup> The Committee concluded that the forced eviction of 15,000 persons, with no adequate alternative housing being offered, was a violation of the right to housing. It then enjoined the government to stop all further forced evictions, which the government did, thus canceling the planned eviction of an additional 70,000 persons. The role of the NGOs in all this was crucial.

## 3. Other United Nations Treaty Bodies

Several other United Nations treaty bodies have occasionally dealt with the protection of the right to adequate housing in their work of monitoring compliance with the international human rights treaties.

<sup>77</sup> All the reports of the states parties, the summaries of the discussions and the concluding observations of the Committee can be found on the web site of the OHCHR: <http://www.ohchr.org/english/bodies/cescr/index.htm>

<sup>78</sup> V. E/C.12/1994/15: <http://www1.umn.edu/humanrts/esc/DOMINICA.htm>

Kothari, an Indian national, was appointed to this post in 2000, and his mandate was renewed by the Human Rights Council in 2006.

The Special Rapporteur must, in essence, “report” on the “realization” and the “evolution” throughout the world of the right to adequate housing,<sup>74</sup> and at the same time explore “concrete solutions” in this area.<sup>75</sup>

To promote the right to adequate housing, the Special Rapporteur has three means at his disposal: annual reports, general and thematic, submitted to the Human Rights Council; missions conducted in the field in order to verify the respect of the right to adequate housing in the countries visited; and urgent appeals sent to governments in precise cases of violations of the right to adequate housing. To use these three means, the Special Rapporteur relies on the work of NGOs and civil society organizations. His mandate constitutes a means of redress of great interest for it is very easily accessible (even by e-mail or by post - see Annex 4).

As noted above, the Special Rapporteur, in several of his reports, has drawn attention to the prohibition on forced evictions. He has also published several reports on the importance of the obligation of non-discrimination in housing policies and access to housing, insisting on the right of women to housing. He has visited Afghanistan, Australia, Brazil, Cambodia, Iran, Kenya, Mexico, the Occupied Palestinian Territories, Peru, Rumania, South Africa and Spain.

During these missions, he has met not only with officials but also with social movements and NGOs, both in the capital and in the field, subsequently submitting, initially to the Commission on Human Rights and now to the Human Rights Council, his reports regarding the respect of the right to adequate housing in each of these countries, reports that comprise multiple recommendations addressed to the governments in question.<sup>76</sup>

The Special Rapporteur also has sent numerous urgent appeals to governments in cases of specific violation of the right to adequate housing. In most cases, he has acted on the basis of information received from NGOs. But he can also be approached by any person or organization and then decide to act if he concludes that the right to adequate housing is threatened. The urgent appeals most often remain confidential, but if the Special Rapporteur does not have any response, he can publish them.

<sup>73</sup> All the reports of the Special Rapporteur are available on the web site of the OHCHR: <http://www.ohchr.org/english/issues/housing>

<sup>74</sup> Resolution 2000/9 of the Commission on Human Rights, adopted 17 April 2000: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2000.9.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2000.9.En?Opendocument)

<sup>75</sup> Resolution 2003/27 of the Commission on Human Rights, adopted 22 April 2003: [http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN\\_4-RES-2003-27.doc](http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2003-27.doc)

<sup>76</sup> All the mission reports of the Special Rapporteur are available in the OHCHR web site: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=98](http://ap.ohchr.org/documents/dpage_e.aspx?m=98)

In practice, ignorance of human rights by local officials and judges makes this possibility very problematic. But if local officials (along with the bureaucracy behind them) and courts give no satisfaction or if it is possible to take the case to a court at the national level (and this is possible in many countries owing to constitutional provisions), it is preferable to demand respect of the right to adequate housing at this higher level. This is what happened in South Africa (v. Illustrations 3 and 4).

## Illustration n°4

### ***The Grootboom Affair***

#### **The Fight for the Right to Adequate Housing in South Africa**

The Grootboom Affair concerns the situation of Ms Irene Grootboom and other persons living in the same situation as she, including several children, who became known as the Grootboom community.

The Grootboom community were living in deplorable conditions and had been waiting for seven years for low-priced housing from the municipality of Oostenberg, in Cape Province. Lacking state aid, they decided to illegally occupy private property. The owner filed a court complaint and obtained an eviction order. The Grootboom community were evicted, and they took refuge on a sportsground, with no protection from the coming winter.

A lawyer took up their defense and wrote to the municipality requesting that it fulfill its constitutional obligations and provide these persons with suitable housing. Receiving no response from the municipality, the Grootboom community lodged a complaint with the Constitutional Court of Cape Province.

The Cape Province court ordered the municipal authorities to provide these persons with emergency shelter. Instead of complying with the court order, however, the officials in question (the federal government and the provincial and municipal authorities) appealed the case to the national Constitutional Court.

The South African Constitutional Court, in its decision of 4 October 2000, began by reaffirming the right of the entire population of South Africa to adequate housing, as recognized in the national constitution (v. Illustration 3). It then examined the Grootboom community's situation and the housing policy of the South African government, concluding that this policy was inadequate, in particular because it provided no short-term measures to aid the poorest. The court then ruled that the Grootboom community were entitled to immediate aid, that the national housing policy must be revised and that a greater part of the budget must be allocated to this policy, to wit allocated for the short-term improvement of the housing conditions of the poorest.

Sources :

the South African Constitutional Court, the Government of South Africa, the premier of the Western Cape Province; Cape Metropolitan Council, Oostenberg Municipality v. Irene Grootboom and others. Case CCT 11/00. Judgment of 4 October 2000: [www.escribnet.org/usr\\_doc/Grootboom\\_Judgment\\_Full\\_Text\\_\(CC\).pdf](http://www.escribnet.org/usr_doc/Grootboom_Judgment_Full_Text_(CC).pdf)

In India, the Supreme Court has for a long time recognized that the right to life includes the right to adequate housing and the right to protection from forced evictions. For the Supreme Court:

*“Basic needs of man have traditionally been accepted to be free - food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in... For a human being [the right to shelter] has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual... A reasonable residence is an indispensable necessity for fulfilling the Constitutional goal in the matter of development of man and should be taken as included in ‘life’ in Article 21.”*<sup>59</sup>

On the basis of this interpretation of the right to life, Indian organizations have been able to bring cases directly before the Supreme Court to prevent forced evictions that were planned by public officials. In one case in Bombay, for example, the Supreme Court obliged officials to guarantee the provision of replacement housing for 50 families threatened by eviction, an essential condition if the government is to respect the constitution.<sup>60</sup>

Cases have also been pursued in the courts of the United States, where public authorities have been obliged to guarantee decent shelter to all the homeless who request it. In one case before the New York Supreme Court in 1979, the Court recognized that the constitution and the social services law of the state of New York guaranteed decent shelter to everybody in need. The Court found that this right implied an obligation for the City of New York to provide these shelters in sufficient numbers.<sup>61</sup>

## 2. Extra-Judicial Redress

The extra-judicial mechanisms available at the local and national level can play an important role in the protection of human rights in general and of the right to adequate housing in particular. In the countries where they exist, the victims of violations of the right to housing can use them by writing a simple letter or by presenting their case orally.

The two principle extra-judicial mechanisms available at the national level are national human rights commissions and ombudsmen’s offices. These mechanisms constitute the core of what are called “national human rights protection institutions”. They exist in 100 countries.<sup>62</sup>

These national human rights protection institutions, although of varying effectiveness and independence depending on the country, generally have a

<sup>59</sup> *Shanti Star Builders v. Naryan Khimalal Totame & Ors* (JT 1990 (1) S.C. 106, Civil Appeal N° 2598 of 1989, quoted in *Housing Rights Legislation: Review of international and national legal instruments*, UN-Habitat and OHCHR, 2002, page 95:

<http://huachen.org/english/about/publications/docs/housing.pdf>

<sup>60</sup> Indian Supreme Court, *Ram Prasad v. Chairman, Bombay Port Trust*, 29 March 1988.

<sup>61</sup> New York Supreme Court, *Callahan v. Carey*, 1979.

<sup>62</sup> For a list of these institutions see: [www.nhri.net/nationaldatalist.asp](http://www.nhri.net/nationaldatalist.asp)

## The European Court of Human Rights

As at the inter-American level, the victims of violations of the right to adequate housing must prove a violation of civil and/or political rights in order to have access to a judicial instance of redress on the European continent: the European Court of Human Rights.

The inhabitants of the village of Kelekçi (Turkish Kurdistan) did this when their houses were burned down by the Turkish armed forces on 10 November 1992, even before the whole village could be forcibly evacuated. In spite of the denials of the Turkish government, the European Court condemned Turkey for violation of the right to respect of one’s private life and home, guaranteed by Article 8 of the European Convention on Human Rights. Turkey was forced to pay financial compensation to the victims.<sup>70</sup>

In another case concerning forced evictions of Cypriot Greeks from their homes and lands in northern Cyprus (following the occupation by the Turkish army in 1974), the European Court of Human Rights found Turkey guilty, on the same principle, of forced evictions of these population and of refusing to guarantee them the right to return to the homes and villages.<sup>71</sup>

## C) At the International Level

The main mechanisms available at the international level for the protection of the right to adequate housing are quasi-judicial with the exception of the U.N. Special Rapporteur on the Right to Adequate Housing, whose mandate is centered on submitting reports to the Human Rights Council (formerly to the Commission on Human Rights) regarding the realization and violations of the right to adequate housing throughout the world. These mechanisms are the Committee on Economic, Social and Cultural Rights,<sup>72</sup> which monitors compliance with the International Covenant on Economic, Social and Cultural Rights, and the other U.N. treaty bodies entrusted with compliance of the various other international treaties. They take partially into account the right to adequate housing or deal with this right indirectly through other rights (for example the right to life).

## 1. The United Nations Special Rapporteur on the Right to Adequate Housing

The Special Rapporteur on the Right to Adequate Housing is a mechanism created by the United Nations Commission on Human Rights.<sup>73</sup> Miloon

<sup>69</sup> European Committee of Social Rights, *European Roma Rights Center v. Greece*, 15/2003: [http://www.esscr-net.org/caselaw/caselaw/\\_show.htm](http://www.esscr-net.org/caselaw/caselaw/_show.htm)

<sup>70</sup> European Court of Human Rights, *Akdivar v. Turkey*, judgment of 16 September 1996.

<sup>71</sup> European Court of Human Rights, *Cyprus v. Turkey*, judgment of 10 May 2001.

<sup>72</sup> Although the Committee is a treaty body, it may not receive complaints. A protocol is being drafted by the Human Rights Council to rectify this. For further information, see our brochure *The Case for a Protocol to the ICESCR*!, CETIM, Geneva, 2005.

Commission nor the Court may receive individual or collective complaints regarding violations of the right to adequate housing. The countries of the American continent did not provide for this possibility. Only civil and political rights protected by the American Convention on Human Rights can be invoked before the Commission and the Court.

The only way for victims of violations of the right to housing to refer the matter to the Inter-American Court or Commission is to prove that their civil and/or political rights have been violated.

This is exactly what 142 family from the Mayagna (Sumo) Awas Tingni communities on the Atlantic coast of Nicaragua managed to do. These families contended that the government was planning to sell a part of their lands to a private company, without consulting them nor guaranteeing them the right to redress. The families demanded that the government proceed to demarcate their ancestral lands and guarantee them their right to property, to land and to housing. The Inter-American Court on Human Rights found in favor of the indigenous families, concluding that the Nicaraguan government had violated their right to property and to legal protection. It ruled that the ancestral lands should be clearly delimited and that the government should, in the future, protect the right to property and to housing against all violation.<sup>68</sup>

### 3. Europe

#### The European Committee of Social Rights

The European Committee of Social Rights monitors compliance with the European Social Charter. All states parties to the European Social Charter must submit reports to the Committee on measures they have taken to realize the economic and social rights of their populations. Since the adoption of the Additional Protocol to the Charter in 1995, NGOs or trade unions can also file collective complaints for violations of the rights recognized in the European Social Charter, including the right to adequate housing. Thus the European Committee acts as a quasi-judicial instance.

Several complaints filed with the Committee directly concerned the right to adequate housing. In one case concerning discrimination against Roma and the forced evictions of which they were victims, the Committee of Social Rights condemned Greece for violating the right to housing. The Committee ruled that the precarious legal status of the Roma's settlements could not justify forced evictions in violation of international law. The Greek government has now extended its housing programs to meet the needs of the Roma, in conformity with the ruling of the European Committee, and it has created a commission entrusted with social integration of Roma in Greece to give effect to the Committee's ruling.<sup>69</sup>

<sup>68</sup> Inter-American Court on Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 2001: www.es.cr-net.org/caselaw/caselaw\_show.htm?doc\_id=405047

broad mandate, which allows them to monitor government policies and their effect on the right to adequate housing and at the same time to protect the victims of violations of this right through legal aid or mediation with public officials. Some have a mandate limited to the defense of civil and political rights, but those also working for the realization of economic, social and cultural rights are more and more numerous.

In most countries, the work of national institutions protecting human rights is coordinated at the national level. However, their presence at the local level makes them readily accessible to victims of abuses. In Guatemala, for example, the mediator's office (*Procurador de derechos humanos*) plays a very important role in preventing forced evictions or in mediating to obtain compensation when these evictions have already taken place.<sup>63</sup> In the case of the building of the Chixoy Dam, for example, which involved the forced eviction of hundreds of indigenous families, the mediator's office managed to broker an agreement with the government and the private company involved in the construction of the dam for payment of compensation to the victims and access to potable water and electricity for the communities that were able to stay in their homes near the dam.<sup>64</sup>

#### The case of Brazil

In this vein, the Brazilian experience is particularly interesting, given that Brazilian civil society is closely associated with the extra-judicial mechanism set up in this country. There are national special rapporteurs, who monitor all economic, social and cultural rights.<sup>65</sup> One of these rapporteurs, Nelson Saule, is the National Special Rapporteur on the Right to Adequate Housing. His mandate is very similar to that of the U.N. Special Rapporteur on the Right to Adequate Housing (v. below). He carries out field missions in the various states of Brazil and is authorized to receive individual or collective complaints regarding violations of the right to housing (in the form of a simple letter or oral presentation). After examining the complaints, he can then refer to matter to the public authorities and request restitution or compensation for the victims.

Brazilian civil society is exceptional in its dynamism and organization, but its example could be followed in other countries where the conditions are also favorable.

### B) At the Regional Level

There is only one judicial mechanism at the regional level for redress of violations of the right to adequate housing: the African Court of Human and

<sup>63</sup> The web site of the Guatemala mediator: <http://www.pdh.org.gt>

<sup>64</sup> V. COHRE, *Continuing the Struggle for Justice and Accountability in Guatemala: Making Reparations a Reality in the Chixoy Dam Case*, 2004:

<http://www.cohre.org/store/attachments/COHRE%20Report%20Guatemala-Chixoy.pdf>

<sup>65</sup> V. <http://www.forum.direitos.org.br>

Peoples' Rights. All the other mechanisms available are either quasi-judicial or judicial instances where civil and political rights must be invoked in order to protect – and only partially – the right to housing.

## **I. Africa**

### **The African Court of Human and Peoples' Rights**

The African Court of Human and Peoples' Rights is the most recently created mechanism for protecting human rights at the continental level. It was created by the countries of Africa in 1998, when they adopted the Protocol to the African Charter of Human and Peoples' Rights thus creating the court. This protocol entered into force in January 2004 and the African Court will be operational starting in 2008.<sup>66</sup>

The African Court has not yet heard any cases, but its role in the protection of the right to housing on the African continent is potentially very significant. As mentioned above, the right to adequate housing is recognized explicitly in the African Charter of Human and Peoples' Rights (see Chapter I). The victims of violations of the right to housing will thus be able to recur to the African Court and request restitution and compensation. To do so, the African country accused of the violation must be a state party to the Protocol.<sup>67</sup> The Protocol adds another dimension to this: the victims of violations of the right to housing must first exhaust the domestic possibilities of redress (see above). However, in most countries, these mechanisms are either inexistent or paralyzed for various reasons. When this is the case, the victims can address their complaints directly to the Africa Court.

It is still too soon to say if this mechanism will be of great help to the victims of violations of the right to housing, but the experience of the African Commission of Human and Peoples' Rights suggests that there is hope, if the Court, in the future, follows in the foot steps of the Commission (see below).

### **The African Commission of Human and Peoples' Rights**

This body has as its mission to monitor the respect of African treaties protecting human rights, among which are the African Charter of Human and Peoples' Rights, the African Charter of Rights and Well-Being of the Child, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women. All states parties to these treaties must submit reports to the Commission on the measures that they have taken to realize the right to housing of their populations.

The African Commission can also receive complaints from individuals or NGOs concerning violation of one of the rights protected by the African Charter, which includes the right to adequate housing. In responding to violations of the

right to housing, the African Commission drafts a report and addresses recommendations to the government in question. The great weakness of this mechanism is that its recommendations are not binding on the states parties (hence the creation of the African Court of Human Rights - see above). But its great strengths are that Commission is relatively easy of access, by both individuals and NGOs, that its mandate includes the protection of all human rights and that recurring to it, depending on the case, can put pressure on the government concerned for an improvement in its respect of human rights.

## **Illustration n°5**

### **Nigeria**

In one case, in 2001, two NGOs recurred to the African Commission of Human and Peoples' Rights for violation of the right to housing and the right to food, in Nigeria. A Nigerian NGO (the Social and Economic Rights Action Center) and a U.S. NGO (the Center for Economic and Social Rights) filed a complaint with the African Commission to defend a people, the Ogoni, from the national oil company and the transnational oil company Shell. The two companies, with the active complicity of the government, were destroying, in total impunity, the land, the housing and the water resources of the Ogaoni people. In this case, and for the first time, the African Commission concluded that the government of Nigeria had the obligation of respecting and protecting the right to housing of the Ogaoni people, including protecting them from the activities of the oil companies, national and transnational. For the Commission: "Each person has the right to a certain degree of security that guarantees legal protection against eviction, harassment or other threats."

This matter was followed closely by many NGOs, both national and international, and an extensive media campaign forced Shell to leave the region where the Ogoni live, which shows that a regional adjudication instance dealing with the right to adequate housing can have a significant influence in concrete cases.

Source:  
African Commission of Human and Peoples' Rights, 155/96 *The Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria*, 2001: [www1.umn.edu/humanrts/africa/comcases/155-96b.html](http://www1.umn.edu/humanrts/africa/comcases/155-96b.html). V. E/CN.4/2004/48, 11 February 2004.

## **2. The Americas**

### **The Inter-American Court and Commission on Human Rights**

The Inter-American Court and Commission on Human Rights have the mandate of monitoring respect by the states parties of the American Convention on Human Rights and the Protocol of San Salvador. The states parties are required to submit reports to the Commission on the measures that they have taken to realize the human rights of their populations. But neither the

<sup>66</sup> The members of the Court have already been designated, and it has held several organizational meetings. The court will sit soon in Arusha (Tanzania).

<sup>67</sup> For the list of states parties to the Protocol see: <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>