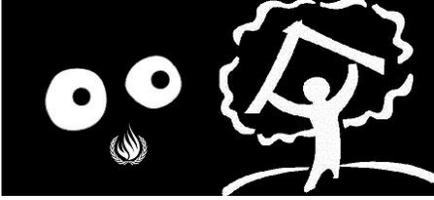




Habitat International Coalition

HOUSING AND LAND RIGHTS NETWORK



Human Rights Habitat Observatory

Restoring the human rights and habitat approaches to the global policy agendas

The HIC-HLRN Human Rights Habitat Observatory review of the High Level Independent Panel's Report to Assess and Enhance Effectiveness of UN-Habitat

The “New Urban Agenda” (NUA), adopted in October 2016, called for “an evidence-based and independent assessment of UN-Habitat” during the General Assembly’s 71st session. The NUA laid out broad terms of reference (ToRs) for that assessment to review four aspects of the agency’s capacities:

- (a) The normative and operational mandate of UN-Habitat;
- (b) The governance structure of UN-Habitat, for more effective, accountable and transparent decision-making, considering alternatives, including universalization of the membership of its Governing Council;
- (c) The work of UN-Habitat with national, subnational and local governments and with relevant stakeholders, in order to tap the full potential of partnerships;
- (d) The financial capability of UN-Habitat.¹

In order to fulfil that task, on 12 April 2017, the UN Secretary-General António Guterres appointed an international High Level Independent Panel comprised by eight members. The Panel worked through July 2017 on the review of key materials, conducting meetings and interviews to gather inputs and suggestions from a wide range of actors and UN-Habitat partners. The Panel issued its final draft assessment on 1 August 2017, emphasizing some important outcomes and expectations of Habitat III as they relate to UN-Habitat performance and capacity. Most welcome are the recommendations that both NUA implementation and UN-Habitat operations further integrate states, civil society and local governments/authorities, while giving reasons why that broader partnership and greater resources are indispensable for the agency’s integrity and NUA success.

One of the most-encouraging aspects of the Panel’s remit was its mandated review of the combined normative and operational dimensions of UN-Habitat, an aspect missing in the inception note and report of the pre-NUA UN Office of Oversight Services evaluation of UN-Habitat.² However, the Panel has not yet been able to apply that key evaluation criterion. The sources of that shortcoming in the assessment report may stem from inter-related characteristics: (1) the Panel’s omission to identify the applicable normative

¹ New Urban Agenda, A/RES/71/256, 25 January 2017, para. 172, at:

<https://unhabitat.org/wp-content/uploads/2017/05/GA-Resolution-A-RES-71-256-New-Urban-Agenda.pdf>.

² Evaluation of the United Nations Human Settlements Programme, Report of the Office of Internal Oversight Services, 30 October 2014, E/AC.51/2014/X.

framework and (2) its unquestioning reiteration of certain notions that UN-Habitat leadership has promoted throughout the Habitat III process.

Those features have led to a series of assumptions that also deserve critical evaluation. The Panel's faithful adoption of these premises has translated into the following postulates:

1. The urban transition will be more or less complete in fifty years, which is the urgent basis for promoting UN Habitat's urbanization agenda to member states;
2. Critical global challenges (e.g., climate change, social exclusion) manifest more in urban areas than elsewhere;
3. The development world has neglected the phenomenon of urbanization, and the NUA corrects that shortcoming;
4. Certain demographic characteristics such as urban poverty and the associated increase of informality are on the rise, while rural poverty is declining;
5. The concept of a "hard rural-urban dichotomy" is diminishing, and Habitat III has delivered a new revelation about the territorial and functional linkages;
6. Sustainable urban growth and economic prosperity are mutually dependent on each other;
7. While UN-Habitat has strayed from its normative work, the creation of a new UN mechanism to coordinate urbanization efforts outside of the normative frame would enable UN-Habitat to restore its normative compass.

Despite the *prima facie* doubts about these assertions, neither the NUA nor the "evidence-based" assessment put the related critical questions to rest. That lack of clarity about the origins or a critical test of these assumptions echoes also a reluctance in the Habitat III process to address root causes of key habitat challenges (e.g., informality; economic disparity; financialization of housing and unregulated real-estate markets; the absent population policy review; migration, and habitat destruction in the context of conflict, occupation and war). Like the political outcome document of the NUA, the assessment report rests on a factual grounding that is sometimes enlightening, sometimes contradictory.

Discovering Urbanization (again)

The report opens by perpetuating falsehoods of UN-Habitat and Habitat III Secretariat messaging through the Habitat III process that have had the effect and/or purpose of promoting UN-Habitat leadership's insurgent "urbanist" agenda, at the expense of the former commitment to balanced rural-urban development in the foregoing Habitat Agendas. That divisive message has freshly compartmentalized development and set back the clock toward "integrated development" and harmed efforts at convergence of disciplines, as well as civil society and social movements. Nonetheless, Habitat III's outcome document turned out to be something ultimately more integrated than its "New Urban Agenda" title suggests, including several explicit calls and recommendations about a necessary territorial dimension. However, the Panel does not address the tension resulting from recent UN-Habitat branding and its demonstrated disregard for the habitat approach³ and corresponding Habitat Agenda.

The Panel's report opens by endorsing the notion that the development world has been slow to respond to the phenomenon of urbanization. However, had the Panel considered UN-Habitat's normative framework, embodied in the Habitat Agenda, for example, it would have found Habitat II emphasizing the challenges and opportunities of urbanization thirty times. In fact, the development world has been fixated on the

³ Defined in Habitat II as planning, implementation and governance that considers villages and cities as points on a human settlements continuum, within a common ecosystem. See The Habitat Agenda A/CONF.165/14, 14 June 1996, para. 104, at: http://ww2.unhabitat.org/declarations/habitat_agenda.asp.

phenomenon of urbanization for some 50 years, not least reflected in the 1972 Stockholm conference and Vancouver Action Plan of 1996. Like UN-Habitat leadership, the Panel seems to have forgotten its ancestors.

At the same time, urban challenges and specificities are not always an explicit or systematic component of the collective memory applied in the humanitarian, development and human rights agendas. The lack of knowledge at the policy level of states and UN processes was evident throughout diplomatic negotiations toward the NUA.

The Panel's continuation of UN-Habitat's disregard for the content and commitments of Habitat II must be seen as a basis for the assessment's dubious assumptions 2 and 5 above. That same omission in the UN-Habitat leadership and Habitat III Secretariat also accounts for untold resources required and spent by many partners to rehabilitate the Habitat III narrative toward a recognition of the inter-related rural and urban dimensions of human habitat.

What Normative Framework?

The report, like UN-Habitat leadership, does not convey sufficient understanding of the normative framework for specialized organizations of the UN, in general, arising from the UN Charter, or for UN-Habitat, particularly as it has related to the Habitat Agenda. By continuing to enable the agency's amnesia about its existential and holistic "habitat" mandate, the Panel treats the rural-urban nexus now as if it were a new revelation of the visionary Habitat III/NUA. Adopting the UN-Habitat leadership's perception of its urban-beneficiary role in the world and abandoning the explicit guidance of the relevant normative frameworks already known, the Panel has missed a rare opportunity to identify some of the existential challenges facing UN-Habitat as a UN body, let alone evaluate performance in its UN context.

While never defining UN-Habitat's normative aims, the report's reference to Habitat Agenda Partners⁴ implies that the Panel's point of reference would be the Habitat Agenda and its corresponding commitments after all. However, that reference is not sufficiently explicit to remove the normative ambiguity that hinders the Panel and its assessment.

To be fair, it must be said that that weakness does not begin with the persons making up the Panel. The evaluation's scant ToRs contribute to that shortcoming by not identifying the timeline for the review of performance, with a baseline consistent with UN-Habitat's role as an/the implementer of a global policy over its institutional lifetime. Only with greater clarity about these criteria and objectives would the Panel be enabled to address sufficiently the prospect of the agency doing so under the forward-looking NUA.

As if searching for methodological guidance themselves, the Panel resorts to UN-Habitat's *Enhanced Normative and Operational Framework* as a standard reference.⁵ However, that rather abstract 2011 flyer also does not identify what constitutes the actual "normative framework." In the absence of alternative guidance, the Panel should have considered UN-Habitat normative activities/functions within UN criteria. Normative—in the broadest sense—is principled approach that seeks to guide and/or modify behavior. In the UN context, it means adherence to treaty law, peremptory norms, declaratory law and global policies as developed. The Panel has evaluated UN-Habitat performance and capacities against none of these criteria.

Nonetheless, the report captures some standard wisdom already stated in the Habitat Agenda and the NUA. There can be no doubt that many urban residents currently lack legal property rights, the benefits of

⁴ HLIP report, op. cit., para. 36.

⁵ UN-Habitat's Enhanced Normative and Operational Framework (ENOF), para. 55, at: <http://mirror.unhabitat.org/content.asp?typeid=19&catid=10&cid=9532&activeid=929>.

citizenship, access to credit, insurance, the rule of law and even the vote.⁶ However, those revelations address the wider global environment, but do not acknowledge their antecedents in the Habitat Agenda, or addressed in other existing normative instruments. The Panel presents them rather as if the fruit of new Habitat III thinking. While such observations restate a reality recognized over the forty years of the Habitat Agendas, it would be helpful if the Panel's report were to explain how those enduring observations relate to UN-Habitat's operations and its normative framework and related capacities.

At the same time, however, the report suggests an effort by the Panel to update the normative and operational framework by referring to contemporary thought beyond the traditional separation between (1) development and (2) humanitarian work.⁷ However, current thinking on the need for policy coherence is actually an envisioned three-part approach, aligning (1) short-term humanitarian relief with (2) the longer-term and institution-building objectives of development within (3) the over-arching human rights framework, with its preventive and remedial dimensions.⁸ The lack of a normative framework leaves the Panel's observations on UN-Habitat performance well behind that trend.

The Panel report tells us that "Broadly, UN-Habitat's normative work is supported by non-earmarked core funding."⁹ That assertion may suggest that UN-Habitat is expected not to operationalize its normative framework in specific projects and/or that donors may be causing UN-Habitat to abandon its norms as a function of ear-marking contributions. The report explains this apparent mission failure by noting that the "need" for UN-Habitat "to chase funds has caused it to stray from its normative mandate."¹⁰ Together, these assertions only provoke more unresolved questions, not least about the source of this problem.

A formal commitment of UN-Habitat to the relevant norms and standards came in the form of a 2013 policy document that considered the human rights-based approach to development as a "novelty." It proposed the establishment of a Human Rights Advisory Group to bring human rights issues to the attention of UN-Habitat's Executive Director and senior management, provide advice on human rights policies, strategies, programmes and projects, as well as facilitate relevant strategic alliances.¹¹ That more-ambitious commitment ultimately devolved as a desk in the UN-Habitat Secretariat's Project Office, suggesting that the normative framework would apply precisely to earmarked funding for projects. This development, unmentioned in the report, poses a contradiction that deserves explanation, but the Panel offers none.

Reporting on Implementation

The Panel is critical of UN-Habitat reporting on operational projects as "limited to client countries, so that information submitted to the GC [Governing Council] does not include full details on performance."¹² By dismissing the agency's normative Habitat Agenda framework, as serial UN-Habitat leaderships have done,

⁶ Report of the High Level Independent Panel to Assess and Enhance Effectiveness of UN-Habitat (HLIP report), Note by the Secretary-General, advance unedited version, 1 August 2017, A/71/1006, para. 7, at: <http://www.un.org/News/dh/infocus/HLP/UN-Habitat-Assessment-Report-3%20August-2017.pdf>.

⁷ HLIP report, op. cit., para. 55.

⁸ See Implementation of General Assembly resolution 67/226 on the quadrennial comprehensive policy review of operational activities for development of the United Nations system, Report of the Secretary-General, A/71/63-E/2016/8, 31 December 2015, paras. 9, 158, 166–67, 179, 210, at: <https://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/qcpr/sgrup-advance-unedited.pdf>; Committee on World Food Security's Framework for Action for Food Security and Nutrition in Protracted Crises (2015), paras. 15–16, at: <http://www.fao.org/cfs/cfs-home/activities/ffa/en/>.

⁹ HLIP report, op. cit., para. 29.

¹⁰ Ibid., para. 41.

¹¹ Activities of the United Nations Human Settlements Programme, Report of the Executive Director, Addendum, UN-Habitat commitment to the human rights-based approach to development, HSP/GC/24/2/Add.7, 11 February 2013, para. 11, at: http://mirror.unhabitat.org/downloads/docs/11994_1_594830.pdf.

¹² HLIP report, op. cit., para. 33.

the Panel also omits to consider the consistent absence of UN-Habitat reporting on implementation of the Habitat Agenda since 1996, despite the suggestive titles of annual documents that the agency has submitted to both ECOSOC and the General Assembly.¹³

That manifest neglect of the agency's normative framework in its reporting functions somehow eludes the Panel, as it is unmentioned in the evaluation report. Nonetheless, that apparent disconnect between the normative and operations dimensions of UN Habitat's performance and reporting is fundamental to the neglect of the agency's normative work about which the Panel notes its dissatisfaction.

On a related subject, the Panel's report states that "[t]he task of ensuring the mainstreaming of NUA implementation throughout the UN system is a large one, and arguably not one that aligns well with the advocacy and normative work that UN-Habitat needs to undertake."¹⁴ While "mainstreaming," integration and coordinated implementation of global policies is the task of every specialized UN organization, the report does not make clear how or why that task is particularly difficult for UN-Habitat and/or how and why such task does not align well with its combined advocacy and normative work. It could be easier to imagine that the mainstreaming challenge lies in reconciling its technical work with the normative framework. However, that should be the primary responsibility of the agency's leadership; that is, for example, to ensure that its technical and urbanist-trained staff and representatives incorporate the social, environmental and human rights functions of their work beyond the physical and economic dimensions of urban planning. However, that requires complementing technical approaches with an ethical vision like that promoted by Habitat International Coalition since its founding. Previous normative frameworks in the form of the Vancouver Action Plan and Habitat Agenda provided that vision, but its nonimplementation could not be explained away because it is hard or incompatible. The capacity question is related more to a lack of will along the reporting chains than to a degree of difficulty.

Governance and Institutional Arrangements

The Panel agrees that the current governance model suffers from systemic problems that affect the agency's accountability, transparency, efficiency and effectiveness. Perhaps this is relevant, too, to the shortcomings in the normative model, including failure of states' (through the GC, GA and ECOSOC) to hold UN-Habitat accountable to operationalizing the relevant normative framework. This is despite the General Assembly's explicit instruction for UN-Habitat to operate a Habitat Agenda Task Manager System, in order to allow better monitoring and mutual reinforcement of actions taken by international agencies in support of Habitat Agenda implementation.¹⁵

The Panel's governance proposals seem to be restatements of those presented by UN-Habitat leadership.¹⁶ However, they are presented without attention to either the higher-level recommendations of the International Team of Advisors (ITA)¹⁷ on the UNSDS or to relevant state treaty obligations. That isolation from the wider UN normative and operational-reform context does not resolve the lack of alignment among the mandate, program, resources and leadership/management at UN-Habitat that the Panel has noted. While the report suggests that UN-Habitat exemplifies an agency that is not "fit for purpose," it does not yet

¹³ "Coordinated implementation of the Habitat Agenda" and "Implementation of the outcome of the United Nations Conference on Human Settlements (Habitat II)," respectively.

¹⁴ HLIP report, op. cit., para. 56.

¹⁵ Declaration on Cities and Other Human Settlements in the New Millennium, A/RES/S-25/2, 16 August 2001, para. 66, at: <http://www.un.org/Docs/asp/ws.asp?m=A/RES/S-25/2>.

¹⁶ Joan Clos, "The Transformation of UN-Habitat," Discussion Paper for the CPR Working Group on Work Programme and Budget (March 2016).

¹⁷ "The Future We Want – The United Nations We Need," input for discussion at the ECOSOC Dialogue Workshop No. 8, 22–23 June, 16 June 2016, at: <http://www.hlrn.org/img/documents/ita-findings-and-conclusions-16-jun-2016.pdf>.

reflect an application of the evaluative tools and methods necessary and available to resolve many of its actual shortcomings. The Panel defers that task to other decision makers.

The Panel does specifically propose that the UN establish a new UN-Urban coordinating mechanism “to perform the work of coordinating all the partners involved for support beyond the functions it envisions for UN-Habitat,” within a wider UN reform. The Panel envisions this new structural layer to operate similarly to UN-Water or UN-Energy. The report argues that such a mechanism “would create the space for UN-Habitat to focus on, and refine its normative mission, emphasizing the central SDG and NUA mandate to ‘leave no-one behind’.”

This proposal and its rationale are neither developed nor convincing. Such a new structure automatically would compete with UN-Habitat, generating precisely the inter-agency tensions that the ITA counselled to reduce as a function and purpose of UN reform. Notably, it would long generate various levels of confusion for each, as well as for prospective donors and other partners.

The coordination for water and energy are also strategically and conceptually distinct from a prospective UN Urban. Water and energy are elements essential to human life, human needs and arguably human rights that are, at once, strategic goods, common resources and highly politicized. However, these elements do not have a corresponding specialized UN organ or dedicated agency. The related human right to adequate housing and human settlements did have an implementing agency within the normative frame of the Habitat Agenda. However, UN-Habitat did not operationalize the Habitat Agenda, which committed to the progressive realization of the human right to adequate housing 61 times, nor did any oversight mechanism seek the related correctives.

If related inter-agency coordination were a goal, a new organ should not replace or contradict the structure already built, however flawed or misdirected to date. The Panel’s report leaves the vision of UN-Habitat’s needed reform and capacity development incomplete, while instead calling for a new mechanism with a vague remit. The affirmation that “an urban champion is vitally necessary” does not sufficiently justify another exclusively urbanist UN development organization and seems to be in contradiction with the strong call that the report makes to overcome the false urban-rural dichotomy. In any case, such a new organ should not function as the UN’s new “urbanization marketplace,” with even less operation of the normative UN framework than the current UN-Habitat. In this aspect, the proposal’s apparent delinking of Nairobi and New York raises too many hazards to leave to chance.

Financial Capability of UN-Habitat

The Panel points to a challenge for UN-Habitat inherent in the fact that most of the current investment into urban areas comes from the private sector and corporate interests.¹⁸ The report also points out the dilemma facing the UN Development System, which the Panel says “has to move beyond a focus on intergovernmental transfers,” while ensuring that both public and private funding be subject to democratic oversight, protects the commons, respects human rights, and is aligned with the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs).¹⁹ However, the necessary balance cannot be achieved without the essential normative criteria, which neither the Panel nor its ToRs specify.

¹⁸ HLIP report, op. cit., para. 14.

¹⁹ Ibid.

The Panel recommends the establishment of a new, catalytic Global Trust Fund to support UN-Urban,²⁰ while UN-Habitat (separately?) develop a strategy for cooperation with multilateral banks, financial institutions, and private sources of finance in order to increase the available resources for inclusive and sustainable urbanization. It might help if the Panel were to explain how to avoid apparent contradictions among these parties, especially how to meet the urgent need for applying the norms, including human rights criteria, across the public and private institutions. Illustrative of the inherent tensions in this scenario is the UN-Habitat's expanding water stewardship and funding relationship with the water-privatizing Coca-Cola Corporation.²¹

In the Panel's view, UN-Habitat needs to mediate conflicts between powerful development interests and powerless informality, and to ensure that marginalized communities and the civil society groups representing them are given due consideration, with a seat at the table, where possible, in the development of urban policies and decisions around planning. However, in the same paragraph, the Panel suggests that the private sector should be asked to "develop their own responsibility norms" accordingly.²² In this one stroke, the Panel not only offers an unworkable model, but also shows its isolation from the normative frameworks already existing²³ and under development.²⁴ That omission takes us far from the prospect of restoring the missing P—the *popular* dimension, including social production of habitat²⁵—in arrangements for development otherwise limited to public-private partnerships (PPPs).

Conclusion

The Panel's vision of a "completed" global urbanization process in fifty years carries the ominous ring of messianism, combined with ethnic cleansing, both common biblical themes. That scenario rests on a triumphal urbanist apparition of "cities on the hill" perpetually swelling,²⁶ exerting greater sovereignty over rural people's—and entire sovereign peoples'—lands and natural resources. While the biblical Noah character originally may have been the ancient Semitic god of human settlements,²⁷ it must be doubted that the replacement of the Habitat Agenda's vision with the present "urban" idolatry is what the gods had in mind. In the light of the predictable fates afflicting our earthly habitat and the need for climate-cooling measures, lifestyles and production and consumption patterns called for in the Paris Agreement, fulfilling a prophesy of "complete" urbanization should invoke deeper questions than merely how to facilitate and benefit from such a proclaimed inevitability.

Without a definition of what normative framework applies to UN-Habitat, or as a subject of the Panel's assessment, the course of UN-Habitat continues to appear as an ark without a rudder. The Panel's ToRs also

²⁰ HLIP report, op. cit., para. 113.

²¹ "The civil society: the UN-Habitat's "Manifiesto for Cities" does not represent our opinions and strategies," *International Alliance of Inhabitants* (12 October 2012), at: [http://esp.habitants.org/noticias/info_globales/la_sociedad_civil_el_manifiesto_para_las_ciudades_de_la_onu-habitat_no_representa_nuestras_opiniones_y_estrategias/\(language\)/eng-GB](http://esp.habitants.org/noticias/info_globales/la_sociedad_civil_el_manifiesto_para_las_ciudades_de_la_onu-habitat_no_representa_nuestras_opiniones_y_estrategias/(language)/eng-GB); "Coca-Cola, UN-HABITAT Extend Water Partnership to 12 Countries," *Coca-Cola Journey* (5 May 2014), at: <http://www.coca-colacompany.com/stories/coca-cola-un-habitat-extend-water-partnership-to-12-countries>.

²² Ibid, para. 74.

²³ Committee on Economic, Social and Cultural Rights, General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, E/C.12/GC/24, 23 June 2017, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en.

²⁴ OHCHR, "Business and human rights," at: <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>.

²⁵ NUA, op. cit., para. 46.

²⁶ See assumption 5 mentioned on p. 2 above.

²⁷ Kamal Suleiman Salibi, *Secrets of the Bible People* (London, Saqi Books, 1988), p. 57.

lack clear criteria against which to carry out its mandated assessment of UN-Habitat's normative performance. That problem alone erodes the assessment process at its very foundations.

If the Panel actually were empowered to address root causes of the shortcomings of UN-Habitat cited in its assessment, then the report might have noted also that UN member states—variously through the General Assembly's 2nd Committee, ECOSOC and the GC—have missed twenty years of opportunity to monitor and ensure UN-Habitat's "coordinated implementation" of the Habitat Agenda. Then the Panel also might have found the causal factors in UN-Habitat's current drift to have a lot to do with political will to maintain the Habitat Agenda course that seems to be lacking at multiple levels. Without recognizing that impediment, it remains unclear how the Panel's take-away recommendations of universal state membership in UN-Habitat's GC and/or a small, strong Policy Board would rectify the agency's noted shortcomings.

After publication of the Panel's report, its proposals deserve far-deeper and more-critical reconsideration, especially testing embedded assumptions and providing greater specificity. The potential consequences for UN effectiveness—and for the sustainability of our human habitat—are too grave to face without the open-ended inquiry still needed.

Expanding numerical membership cannot compensate the need for higher quality and more publicly interested engagement in the global habitat policy and its implementing mechanisms. While the Panel's recommendation for greater involvement of civil society and local governments/authorities may bring beneficial inputs, the details of such participation remain the subject of further consideration of modalities and available models to develop the appropriate formula for civil society and social movements' engagement with "the UN-Habitat we want." The HIC-HLRN Human Rights Habitat Observatory offers to be a source of strategic thinking toward that eventuality, including specific recommendations to come.